

**British Virgin Islands: Financial Sector Assessment Program Update Documentation—
Technical Note on Corporate and Trust Services Providers**

This Technical Note on Corporate and Trust Services Providers for **British Virgin Islands** was prepared by a staff team of the International Monetary Fund 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 April 2010. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of British Virgin Islands or the Executive Board of the IMF.

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**International Monetary Fund
Washington, D.C.**

FINANCIAL SECTOR ASSESSMENT PROGRAM

BRITISH VIRGIN ISLANDS

TRUST AND CORPORATE SERVICE PROVIDERS RISKS AND
REGULATION

TECHNICAL NOTE

OCTOBER 2010

INTERNATIONAL MONETARY FUND
MONETARY AND CAPITAL MARKETS DEPARTMENT

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GLOSSARY

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

I. INTRODUCTION

1. **The British Virgin Islands is a well-established International Financial Center offering offshore financial services for over 25 years.** The jurisdiction is considered to be one of the leading jurisdictions for company incorporations and the offering of trust services. Over the years since 1984, there have been over 800,000 company incorporations and numerous reforms to the laws of the jurisdiction that seek to enhance the corporate and trust services offered to clients by the jurisdiction. These include, for instance, the legislation, such as the BVI Business Companies Act; The Virgin Islands Special Trusts Act; the Insolvency Act; and many others. The jurisdiction has also sought to enhance its infrastructure in order to improve its attractiveness. A key example of this would be the VIRRGIN data management system, which is in use at the Registry of Corporate Affairs. This system allows for the electronic filing of company returns and documents, and allows for a prompt turnaround time for the issue of critical documents such as certificates of good standing.
2. **The government of the BVI derives over 60 percent of its revenues from the fees paid to the FSC.** Of this amount, the Trust and Corporate Services sector contributed over 90 percent, mainly via incorporation and renewal fees.
3. **Trust and Corporate Services have been recognized internationally as being a potential source of financial risk, including risks from money laundering and the financing of terrorism.** As these BVI business companies in the main do not deal with the assets of BVI Islanders, these activities do not pose a direct risk of financial losses to citizens in the same way as, say, the onshore banking sector. However, this sector (particularly as a result of its magnitude and prominence within the BVI financial sector) also constitutes a major source of reputational risk. Given the government's reliance on the financial sector for revenue, the authorities have committed to the preservation of the jurisdiction's reputation by applying the highest standards of supervision to its financial sector.
4. **Since the last assessment under the Offshore Financial Center Assessment Program (OFC), there have been significant changes to the legal and institutional framework in this sector.**
5. **This report reviews the structure of the Trust and Corporate Service Providers sector in the BVI, focusing on their role in the offshore financial sector,¹ and seeks to assess the legislative framework in place as well as effectiveness of implementation and enforcement of this framework.** The report also evaluates the legal/regulatory framework against the draft OGBS Statement of Best Practice for Trust and Corporate Services Provider. The report also comments on the regulatory treatment of bearer shares within the jurisdiction.

¹ The report therefore focuses on the role of these providers in relation to the provision of services to the international finance sector.

6. **The paper is structured as follows:** Section II discusses the structure of the TCSP industry, the factors that have shaped it, and recent trends. Section III outlines the key features of the legislative framework, including considering the OGBS Statement. Section III considers the regulatory and supervisory measures to implement these laws. Section IV discusses the challenges and policy options.

II. OVERVIEW OF THE CORPORATE AND TRUST SERVICES INDUSTRY

7. **The TCSP industry in the BVI is currently comprised of 125 firms offering a mixture of services.** However, a common feature of these firms is their role as registered agents (RAs) under the BVI Business Companies Act (BCA). Under the Act, every business company incorporated under the Act requires an RA² to administer its affairs at all times. RAs may be licensed under one of two statutes, namely, the Banks and Trusts Companies Act or the Company Management Act. Licensing under either the BTCA or the CMA grants to the practitioner the right to act as registered agents for business companies.

8. **Under the BCA, an RA carries out a number of functions.** These include:

- (a) Maintaining the registered office of the company;
- (b) Maintaining the Register of Shareholders;
- (c) Maintaining the Register of Directors;
- (d) Maintaining Memorandum and Articles of Association of the company; and
- (e) Receiving Notices relating to a number of issues, including but not limited to measures for the immobilization of bearer shares.

9. **By virtue of licensing under the CMA, RAs are also empowered to carry on the business of company management.** This term includes company incorporations and registrations under the BCA, provision of registered agent services, provision of registered office services, and provision of directors or officers to companies whether incorporated in the BVI or overseas, and the provision of nominee shareholders for companies incorporated in the BVI or overseas. At the end of 2009, there were 20 RAs licensed under the CMA.

10. **Trust business is governed by the BTCA and means the business of acting as a professional trustee/protector/administrator of a trust or settlement, managing or administering any trust or settlement as well as company management services as defined by the CMA.** The BTCA provides that no trust business can be conducted from within the BVI (whether such business is within or outside the BVI), unless the person conducting this business holds a license under the BTCA.

² Section 91 of the BVI BCA.

11. **A Trust Company may hold one of the following types of licenses:**
- (a) A Class I Trust License (which permits the holder to carry out both trust and company management business).
 - (b) A Class II Trust License (which allows the holder to only carry out trust business). Such a license may additionally be issued as a restricted Class II license, which limits the number of trusts that may be administered to 50.
 - (c) A Class III Trust License (which only permits the holder to carry out company management business). This license may also be issued as a restricted Class III license which limits the holder to only offering directorship and nominee shareholder services.

The structure of the population of the industry is as follows:

Table 1. British Virgin Islands: Structure of Industry Population

License Type	2009	2008	2007	2006	2005
Class I trust license	94	98	98	101	101
Class II trust license	7	2	2	0	0
Class III trust license	8	6	3	0	0
Restricted Class II trust license	105	104	107	108	111
Restricted Class III trust license	0	0	0	0	0

12. **Within the above categories of trust licensees, the Regulatory Code establishes a regime for managed trust companies.** These companies are defined as companies the licenses of which are subject to the condition that their business is carried out and managed by a BVI trust company holding a Class I license. These companies are subject to all of the applicable laws of the jurisdiction and must have a physical presence (including having a senior manager and director being resident in the jurisdiction). The main concession to these companies is that it is allowed to rely on its Class I licensed trust company to provide key managerial and infrastructural services, which must be contained in a management agreement between the two entities. These include: the compliance function, record-keeping (which must segregate the books of the managed company from its own books), AML/CFT reporting and other requirements. The Class I licensed trust company must also provide at least one director on the Board of a managed trust company. The duties and responsibilities of the Class I licensed trust company and the managed trust company must be set out in a management agreement. Legal liability, however, remains attached to the managed trust company as regards its operations, and all statutory duties on directors apply to the individuals holding these positions (whether they are from the managed trust company or the

trust company which administers the affairs of such a company). Also, the FSC carries out compliance inspections of the trust companies that administer them. There are currently 24 trust companies who administer managed trust companies.

13. **Registered Agents are considered fiduciaries.** RAs are under a duty (particularly in the case of trust companies) to ensure that the interests of their clients are protected.³ In the case of CSPs, their duties may not be strictly fiduciary in nature, depending on the services provided (save for such fiduciary duties that may be owed as directors and officers); however, they are placed under a heavy burden under both the companies legislation and the CMA, as well as AML/CFT legislation to ensure that the companies that they are responsible for operate in compliance with the governing laws and regulations.

14. **There has been a slowdown in new incorporations since a high in 2007.** The industry has given various reasons for this, including tax changes in the United Kingdom as well as the impact of the global financial crisis. There was also a belief that the regulatory changes in the jurisdiction has resulted in a *“flight from quality.”*

Table 2. British Virgin Islands: New Incorporations under the BCA

2005	2006	2007	2008	2009
58,184	65,284	77,022	61,716	47,477

15. **As a consequence, some firms are seeking to move to more “value added” products, such as independent directorships services as well as more sophisticated trusts services.** The government has responded to this proposition by various measures, including modernizing the Trustee Act and by the passage of the VISTA. In addition, under the Financial Services (Exemptions) Regulations 2007, the authorities have also granted exemptions to certain business companies to exempt them from the licensing requirements under the BTCA. These private trust companies may only carry out unremunerated trust business or only administer related trust business (i.e., where one trust is related to another by virtue of the fact that the settler under one trust is a connected person to the settler of the second trust). This “connection” relates to a familial relationship (e.g., spouse, parent or grandparent). Such companies must be serviced by an RA holding Class I trust license under the BTCA.

16. **Other firms are very cognizant of the critical skills sets required to do this type of activity and, as a consequence, do not intend to move into new areas unless these core competencies are acquired.** Some international firms are able to leverage on parent company expertise. Another trend is that law firms (who would have normally advised trust

³ The VISTA law seeks to overcome some of the common-law rules relating to trustees by actually restricting the role of such trustees in these specific trusts as regards their powers to intervene in the management of companies whose shares are held by those trusts.

companies) are now themselves setting up affiliates seeking licenses and thus becoming competitors.

17. **For existing trust companies, the global financial crisis has also resulted in a significant decline in asset values.** However, the degree of loss depended on the level of diversification in trust assets. Because of the high level of business garnered from Asia, this provided some buffer against losses relating to assets in the United States. Licensees (in conjunction with the government) are currently seeking new markets in Brazil, China, and India.

18. **The RA regime is predicated on placing a high regulatory burden on RAs to essentially ensure their clients comply with the relevant laws in the BVI.** This is in addition to the RA's own obligations under the governing and AML/CFT legislation to carry out such critical obligations such as know-your-customer requirements, suspicious transaction reporting, and record-keeping. The obvious issue is that, since the vast majority of the actual business of the BC takes place abroad, the RAs may find themselves in a difficulty in obtaining the relevant information from the business owners and directors on the ultimate beneficial owners, the nature of the business, the relevant transactions, and the changes in the owners and directors of the business. On the other hand, companies may pressure RAs for documentation and certificates of good standing. RAs generally maintain stringent policies relating to the acceptance of business as well as policies for the termination of business relations (including resignations) where they are unable to get the appropriate level of information from companies. They are required by law to serve on the company and file with the Registry both notice of their intention to resign as well as notice of their actual resignation.

19. **RAs did point out that, notwithstanding the comprehensive legal provisions relating to the operation of RA businesses, standards across the industry relating to accepting and conducting continuing business varied significantly.** RAs did have experience where business that was declined because of heightened risk factors or discontinued because of an inability to obtain appropriate CDD and other important information did find its way to other RAs. Also, in cases of mergers and acquisitions, RAs have found that the systems within acquired entities have been seriously delinquent.

20. **It is the view of the industry players that one of the key drivers to ensuring appropriate standards are maintained across the industry will be the work of the authorities in detecting breach conduct and ensuring appropriate enforcement of the relatively new statutory regime.**

21. **RAs were of the view that declining company registrations must lead to greater efforts to provide value-added services.** These value-added services currently do not generate to the BVI government the level of fees that are currently generated by incorporations.

22. **RAs also voiced the opinion that if the BVI RAs were to move to more value added services, there would need to be a greater cadre of trained personnel to meet these needs.** For example, there is great difficulty in recruiting very specialized staff, such as

qualified auditors and this may deter expansion by the private sector. The private sector is allowed to secure expertise from outside the territory and work permits are issued by the government. Similarly, the FSC has the ability and resources to recruit qualified staff whenever and from wherever necessary, be it from within or outside of the territory. There are, however, limits to external recruitment, and local businesses expressed concern that shortage of skills would prevent a deepening of the sector.

III. THE LEGAL FRAMEWORK FOR THE REGULATION OF TCSPs

23. **TCSPs are governed by a number of regulatory statutes,⁴ including the following:**

- (a) The Banks and Trust Companies Act;
- (b) The Company Management Act;
- (c) The BVI Business Companies Act;
- (d) The Financial Service Commission Act; and
- (e) The Regulatory Code.

There are also several other regulatory and AML/CFT enactments, such as the Anti-money Laundering and Terrorist Financing Code of Practice, which govern the activities of TCSPs. These are considered elsewhere in this report.

24. **These statutes deal with critical supervisory issues.** They contain the regime for licensing, ensuring fitness and propriety of the owners and directors, change of significant ownership without approval, requirements for annual external audits and their submission to the FSC, powers of the FSC to require information and conduct searches, and record-keeping and the sanction and enforcement powers of the FSC.

25. **One issue that was noted is that the prohibition on the conduct of unauthorized banking or trust business under the BTCA attracts fines of not more than \$50,000 or a prison term not exceeding two years, or both.** This fine appears to the examiners to be very low, given the importance of both the banking and trust company business to the jurisdiction and the considerable damage that could be done to the economy from unlicensed business. The authorities should contemplate increasing this fine substantially. The fine of \$50,000 is the highest under the BTCA (as it is under the CMA). Other notable offences attracted fines that appeared low. These include, for example, BTCA s. 23 failure to implement insurance (\$10,000 fine), BTCA s. 17C failure to prepare or submit audited accounts (\$10,000) and BTCA s. 14 transfer of a significant ownership interest in licensee

⁴ There are other statutes that also apply to trust business, such as the VISTA law and the Trustees Act. There are also several pieces of legislation relating to anti-money laundering and the financing of terrorism that govern the activities of TCSPs, which are considered elsewhere. Statutes include their related subsidiary legislation, such as regulations.

without FSC approval (\$10,000).⁵ It was also noted that there was no express power for the Commission to set aside transactions entered into in breach of section 14.

26. The Financial Services Commission Act, in particular, provides a strong framework for the supervision of this and other financial services in the jurisdiction.

The Act has key provisions for:

- (a) Information gathering;
- (b) Sharing information with other regulatory bodies;
- (c) Compliance Inspections;
- (d) The appointment of examiners external to the FSC;
- (e) Wide powers of enforcement (including powers to apply for protection orders, the issuing of directives, and the suspension or revocation of licenses);
- (f) Powers to require the removal of directors or other persons;
- (g) Powers to issue the Regulatory Code;
- (h) An Appeals Tribunal to deal with the claims of parties who are aggrieved by decisions of the FSC (which decisions do not include decisions on the grant or refusal of a license to an applicant);
- (i) Power to levy fines on licensees for committing breaches of the Act (per the FSC (Administrative Penalties) Regulations; and
- (j) Power to compound offences.

27. The Regulatory Code was passed into law in December 2009. The Code was issued pursuant to section 41 of the FSCA and outlines the conduct required of all FSC licensees and the officers and agents of those licensees as well as any other matter permitted by any of the financial services legislation. The Code constitutes legal obligations on the part of licensees. Breaches of the Code constitute grounds for the taking of enforcement action pursuant to FSCA s. 37(1). Compliance Inspections and statutory examinations ordered by the FSC will also test licensee's compliance with the provisions of the relevant laws including the Code. Whilst non-compliance with the Code does not constitute a criminal offence, a breach of any of its provisions could attract the imposition by the FSC of administrative penalties under the Financial Services (Administrative Penalties) Regulations, 2006. As stated above, breaches will trigger enforcement action and may affect the fit-and-proper status of the licensee or its directors or officers.

⁵ In the case of the equivalent offence under the CMA, the fine is \$5000.

28. **The Regulatory Code outlines overarching high-level principles of integrity, management and control, financial resources, protecting customer's interest, transparency, and proper relations with the Commission.** It provides critical detail of the regulatory requirements in several key areas, including: licensing processes; fit-and-proper criteria; a licensee's corporate governance framework (including the role of Board and management); and systems for key areas such as risk management, internal controls, internal audit, and record keeping. It also outlines requirements relating to financial reporting and auditors; outsourcing; segregation and protection of customer assets; capital requirements; and insurance requirements.

29. **Although the Regulatory Code has been passed into law, it is not being fully enforced at this time.** The FSC advises that the Code requires amendment in certain substantive areas (including incorporating provisions to take into account the recent April 2010 passage of the SIBA). The FSC has indicated that it intends to give licensees time to implement the requirements of the Code. Once the amendments to the Code are finalized, the FSC will announce the time frame within which licensees are expected to bring them into total compliance with the Code. Once that time frame lapses, the FSC will commence inspections to take into account compliance with the Code and will take enforcement action based on noncompliance.

30. **Discussions with RAs indicate that the Code represents a codification of several existing laws and practices and that therefore it does not constitute a major shift in their operations.** However, it was pointed out that work would have to be done on areas such as the documentation of procedures into manuals. Requirements for compliance personnel also may place financial pressure on RAs and the pressure on the jurisdiction's limited workforce was also a concern. The scarcity of some specialized skills is also an issue for the FSC's own staffing needs. Capital requirements did not appear to be a problem for RAs, but the issue of Regulatory Deposits and the requirement for a specific level of insurance could impact finances, particularly for smaller participants. Some corporate governance requirements, such as internal audit and segregation of duties as required by the Code, could also challenge smaller firms. The FSC does expect and has seen some consolidation within the sector as these additional regulatory costs become evident.

31. **Under the Code, Class I, II and III Trust Companies must hold at least \$250,000 in capital.** Where the companies hold Class I or Class III licenses, the regulatory deposit is calculated in accordance to the number of BCs being managed. It ranges from \$30,000 to \$80,000 (where more than 60,000 BCs are being administered). Additional regulatory deposits are also required for subsidiaries. For licensees under the CMA, the capital requirement is \$25,000, which can be wholly in the form of cash deposits or \$10,000 in cash and \$15,000 in real estate or stand-by letters of credit.

32. **Taken together, the primary financial services laws relating to the TCSP sector and the secondary legislation (including the Regulatory Code) constitute a comprehensive legal framework for the regulation of the TCSP sector.** The framework complies with the OGBS Statement issued September 6, 2002, as seen from Appendix 1.

33. **While the Regulatory Code has come into force, the FSC was not able to confirm a specific industry program for monitoring how RAs were progressing toward compliance with the provisions of the Code.** The Commission should carry out surveys of its licensees in order to assess the levels of compliance with the provisions of the new laws in order to properly inform the timing for enforcement, as well as to ascertain the main areas of existing vulnerabilities within the industry.

IV. REGULATORY FRAMEWORK AND PROCESSES

34. **The Banking and Fiduciary Services Division of the FSC has 14 members of staff, of whom 4 conduct examination.** The Division works closely with the other Divisions of the FSC, including the Legal and Enforcement Division and the Inspections Unit. The officers of the Division are highly qualified and experienced and receive high-quality training in the work of the Division.

35. **The Division monitors compliance among the RA sector by using a variety of methods, including the receipt and analysis of data from licensees and by the conduct of off-site examinations.**

36. **RAs are required to furnish their audited accounts and other information to the FSC.** Identical provisions under both the BTCA and CMA require the licensee to provide their audited accounts to the FSC within six months of the end of the financial year. Audited accounts include a director's certificate, an auditors report, and an auditor's certificate of compliance (verifying that licensing information remains accurate). Prudential returns are filed semi-annually.

37. **RAs also provide the FSC a response to a Risk Based Questionnaire every two years.** This covers several areas, including types of business lines; number of companies and trusts under management; the value of the trusts; details of staffing; questions regarding introduced business; bearer shares; professional indemnity insurance; and compliance policies and procedures.

38. **The FSC is in the process of shifting to a new semi-annual return, which may be submitted to the Commission in electronic form.** This new return has additional requirements relating to the geographical base of the licensee's clients and is to be submitted on a semi-annual basis.

39. **In addition to off-site surveillance, the FSC has a program for on-site examinations.** The number of on-site inspections carried out by the Division can be seen in Table 3.

40. **The FSC has indicated that it uses a risk-based approach in devising its inspection program to enable it to concentrate more resources on entities with likely regulatory issues.** The Inspections Unit, which settles the scheduling of inspections, also acknowledged that the inspections relating to this sector are given priority, given the size of the industry. Decisions as to which institutions should be inspected are informed by a number of considerations, including considerations of size, regulatory history, and types of business

(including levels of introduced business and geographical location of clients). However, there was not noted a specific policy governing this area, although there were clearly comprehensive consultations and deliberations within the FSC as to entities that should be treated as priority.

Table. 3. British Virgin Islands: Number of On-Site Inspections Carried out by the FSC

Year	Number of Inspections	Number of BCs Covered	Number of Trusts Covered	Percentage of Companies on the Register of Companies Managed by Inspected Licensees
2009	19	324,845	1,225	72.76
2008	23	179,469	2,853	45.51
2007	14	86,948	367	25.15
2006	12	35,414	648	12.47
2005	5	61,023	313	24.96

41. Examinations are prefaced by intensive information gathering and planning.

On-site examinations in this sector can last from less than a week to 14 days, depending on the size and complexity of a licensee’s business. Detailed checklists are used to ensure coverage of all operations. Sometimes, examinations are carried out on multiple licensees within a group. Inspections include specific AML/CFT components and also specific pulling of sample files to ensure that policies were being properly applied. The management is briefed as to the general findings in an exit meeting and the finalized report is forwarded to the directors and management of the licensee.

42. The FSC uses a semi-automated system for on-site examinations (“K Review”).

K Review essentially requires that licensees’ information is imputed into the FSC’s specialized information technology systems. This generates a type of preliminary draft report, which then assists the examiners in focusing the examination and finalizing the report. The FSC points to the benefit of this system as ensuring equality of treatment across the industry. The Commission also has written inspection manuals that are comprehensive and clearly outlines the procedures prior to, during, and after the on site inspection.

43. RAs consider that the inspection reports are comprehensive and do assist the licensees in identifying weaknesses in their operations.

The reports also prescribe timelines for action. RAs do discuss the findings of the report with the FSC, although any contesting of the reports’ findings must be limited to questions of fact. However, RAs have indicated that there have been delays in the provision of the final reports.

44. **However, because some of the key requirements of the OGBS Statement are contained in the Regulatory Code and the FSC is not yet fully enforcing the Code, then the FSC inspections cannot be said to currently test against the full requirements of the OGBS Statements.**

45. **For a core inspection staff of four officers, 19 examinations for the year 2009 are exemplary.** During 2009, the FSC conducted 19 examinations, of which 2 examinations covered licensees that had the largest volumes of business among TCSPs. On the basis of this *simpliciter*, the sample for 2009 would appear low, but in reality it encompassed a greater representative sample of the industry. The FSC conducts its inspections with consideration to the scope of a licensee's business, size, and risk-weighted results, which is subject to the input of the Enforcement Committee on the finalization of a schedule of inspection. This schedule is subject to review to ensure that an inspection cycle of four years is achieved. It is recommended that the authorities consider increasing its complement of examiners in this area, particularly given the national economy's dependence on this particular sector and the potential for reputational risks. For example, the FIA advises that the majority of SAR reports from the RA sector related to allegations of fraud involving fraudsters utilizing BVI business companies. This is a matter of serious concern, since such allegations have the possibility to seriously impact the reputation of the jurisdiction.

46. **The FSC has increased its focus on enforcement issues by adding new personnel, establishing an Enforcement Committee, and increasing the level of sanctions applied.** Types of sanctions include administrative penalties, advisory letters, appointment of examiners and liquidators, the issue of public warnings, or warning letters or the issue of directives. The FSC has implemented an Enforcement Committee in early 2007, bringing with it a more methodical style approach to enforcement issues.

47. **In one notable case, the FSC applied for a protection order against a trust company and successfully defended a court challenge in the Court of Appeal.** The decision supported the FSC's power to obtain a protection order on an *ex parte* basis, notwithstanding previous advice to the licensee to the effect that it would be given time to rectify the regulatory issues uncovered by the Commission. An interesting point to note was that this was a very small firm that lacked key systems for the proper management of its business. Such a case points to the fact that the small size of the firm can itself be an indicator/source of financial and reputational risk, notwithstanding that the firm may not be managing many companies or trusts.

48. **The Legal and Enforcement Division also engages in system surveillance via a number of methods, including contracting with global monitoring services as well as in-house monitoring of financial publications dealing with both onshore and offshore finance.** These intelligence measures assist the Legal and Enforcement Division in identifying firms for investigation and, if necessary, enforcement action.

Table. 4 British Virgin Islands Sanctions Applied by the FSC

Year	Actions
2009	60
2008	52
2007	6
2006	8
2005	4

49. **The RA industry felt that the increase in enforcement activity was a positive, albeit recent development.** However, some licensees felt that the FSC focused on what were mainly minor offences. For example, almost 50 percent of the administrative penalties issued in 2009 related to late reporting breaches. Again, the relatively low rate of inspections may impact the ability of the Commission to detect serious breaches that a licensee may deliberately hide from the Commission.

50. **In terms of industry contact and feedback, the FSC has improved its contact with the RA industry.** The FSC has quarterly “Meet the Regulator” meetings at which new developments and sector presentations are made. The Commission also held workshops on the Code to familiarize participants with the new requirements. The Managing Director also meets regularly with the executive of the ARA on a quarterly basis. Licensees, however, felt that on a day-to-day basis, they sometimes experienced some reluctance on the part of the FSC to provide clear compliance advice, which left licensees to pursue their interpretation of the regulatory requirements.

51. **The FSC also maintains contact with other regulators of TCSPs, particularly through attendances at the semi-annual OGBS meeting.** The FSC has also executed an MOU with 14 countries and two organizations, including the FSC in Jersey, which is the home-jurisdiction of the parent companies of certain BVI RAs.

V. THE REGIME FOR THE IMMOBILIZATION OF BEARER SHARES

52. **The BCA Division 5 deals with the regime for the immobilization of bearer shares.** The FATF 40 + 9 Recommendations on Anti-Money Laundering and Countering the Financing of Terrorism acknowledges the inherent risk that bearer shares pose and mandates that countries should implement measures to ensure that bearer shares are not misused for money laundering.⁶

⁶ FATF Recommendation 33.

53. **Under the BCA, companies with bearer shares are required to deposit these shares with either authorized custodians or recognized custodians.** Authorized custodians (12) must be approved by the Commission pursuant to the FSCA. The FSC must be satisfied of the fitness of the person to be an authorized custodian of bearer shares as well as the systems in place for the secure custody of the shares, and to comply with the procedures prescribed in the BCA. In the case of recognized custodians (6), these are entities recognized by the FSC by Order under the FSCA that carry out clearing activities or act as investment exchange in a jurisdiction that is situated within a FATF jurisdiction.

54. **Recognized Custodians must ensure that they maintain full custody and control over the shares.** They are not allowed to transfer the shares save in cases where they are being transferred to another authorized or recognized custodian, or to the company where these shares are converted to registered shares or are redeemed or where they are returned to the RA (for the purpose of depositing same with another custodian).

55. **Under the BVIBCA, bearer shares are deemed to be disabled for any period that they are not deposited with a custodian.** There was a deadline of December 31, 2009 for grandfathered bearer shares to be deposited as required by the Act. During the period that the share is disabled, the share does not carry any of the entitlements that it would otherwise carry (e.g., voting rights) and any transfer or purported transfer of any interest in the share is void and of no effect. The disability may be terminated by making an application to court for an extension of the time to deposit the shares with an authorized or recognized custodian or exchange them for or convert them to registered shares.

56. **This regime, together with the statutory obligations of the RAs to ascertain beneficial owner information and customer due-diligence obligations, appears to be in keeping with the FATF Recommendations.**

VI. CONCLUSIONS AND RECOMMENDATIONS

57. **The BVI has a comprehensive legislative framework for the supervision of TCSPs, which is largely in keeping with the international standards in this area.** The Authorities have also implemented a regulatory system that seeks to leverage on information technology and risk based analysis. The FSC is staffed by competent and well-trained professionals.

58. **The authorities have addressed most of the key recommendations arising from the 2004 Report.** These relate to the following:

- (a) Deepening the FSC's engagement with the RA sector;
- (b) Transaction testing by on-site inspection. With regards to internal auditing requirements, these have now been introduced by the Regulatory Code; and
- (c) Ensuring that introduced business is an integral part of both the on-site and the off-site processes.

59. **However, given the developments in the sector since the last assessment, there are key areas that require attention by the authorities to ensure the continued protection of the reputation of the jurisdiction.** These include:

- (a) More regulatory resources in the inspection function of the Division and the FSC to ensure better coverage of the sector. This was a concern in the 2004 Report.
- (b) Earliest possible full implementation and enforcement of the Regulatory Code. As many of the requirements of the OGBS Statement is reflected in the Regulatory Code, compliance inspections will not fully test against the requirements of the OGBS Standards until the Code is in full effect.
- (c) Greater monitoring of the progress of licensees towards meeting the requirements of the new legislation to ensure that areas of vulnerability are identified and addressed.
- (d) Development of a documented risk based inspection policy to establish the specific criteria for the prioritizing of the inspection of licensees.
- (e) The Authorities may also wish to consider whether penalties for carrying out unauthorized business under the BTCA and CMA are sufficiently dissuasive and whether the overall offences regime under both Acts are sufficiently dissuasive. The power of the FSC to set aside transactions relating to the unauthorized transfer of significant interests in licensees under the BTCA/CMA should also be stated expressly in the law.

Appendix 1. Comparison with OGBS Statement

OGBS Statement Requirement	BVI Legislative Provisions
Fit and proper standards	See: FSCA s. 16, CMA s. 4, BTCA s. 4 Regulatory Code part 2 Division 2 Guidance Notes on Fit and Proper Test Guidelines And Operating Procedures Of The FSC Licensing And Supervisory Committee
Requirements for corporate governance	Regulatory Code Division 3
Requirements for compliance with (a) AML/CFT compliance, including customer due diligence (b) Applicable laws and regulations (c) Standards for directors and trustees	See: (a) AML Regulations r. 4-9, AMLTF Code of Practice Part III, Regulatory Code Part 2 Division 4 and 8 (b) Generally BTCA, CMA, BVBVIBCA, Regulatory Code and AML/CFT legislation (c) BVIBVIBCA Division 3, Trustee Act Part X, VISTA s. 5
Requirement to demonstrate that business carried out with: (a) identification/segregation of customer funds; (b) safe custody and proper management of assets (c) orderly accounting records (d) adequate client documentation (e) transactions carried out by persons of expertise, knowledge and status, without conflicts and rules that govern confidentiality and withdrawal of services (f) transactions carried out expeditiously	See: (a) Regulatory Code Part 2 Division 7 (b) Regulatory Code Part 2 Division 7 (c) BTCA s 17A-D, CMA s. 17A-D, Regulatory Code Part 2 Division 6 (d) Regulatory Code Part 2 Division 7, BVI BVIBCA Division 2, AMLR r. 9 (e) Regulatory Code Part 2 Division 3
Requirement that business financially sound: (a) adequate records of both company and clients (b) adequate financial resources (paid up/liquid capital) (c) compliance with international accounting	See: (a) Regulatory Code Part 2 Division 7, BVI BVIBCA Division 2, AMLR r. 9 (b) BTCA s. 13, CMA s. 10, Regulatory Code Part V Division 1

OGBS Statement Requirement	BVI Legislative Provisions
standards; (d) maintaining appropriate indemnity cover	(c) Regulatory Code s. 59 (d) Regulatory Code Part V Division 1
Requirements for systems and procedures: (a) Compliance function; (b) effective reporting functions (AMLRO) (c) compliance management system (d) record keeping for all aspects of operations (e) manuals for different aspects of business (f) adequate span of control by skilled and experienced persons (g) personnel to be appropriately experienced (h) continuous professional development (i) procedures to protect against misleading information to public	See: (a) FSCA Part V, Regulatory Code, Part 2 Division 4 (b) AMLR r 13 (c) Regulatory Code, Part 2 Division 4 (d) AMLR r 9; Regulatory Code, Part 2 Division 7 (e) Regulatory Code Part 2 Divisions 3 and 4 (f) Regulatory Code Part 2 Division 3 (g) Regulatory Code Part 2 Divisions 2 and 3 (h) The Association of Registered Agents and the Society of Trusts and Estate Practitioners as well as the FSC are active in this area (i) Regulatory Code Part 2 Division 8
Proper provisions for information sharing; (a) information on ultimate beneficial owners/controllers (b) monitoring of changes in ownership and control (c) appropriate mechanisms for reporting to authorities; (d) no barriers to flow of information (e) KYC information maintained in the jurisdiction (f) No barrier in flows of information from introducers	See: (a) Anti Money Laundering and terrorism Financing Code Part III (b) Anti Money Laundering and terrorism Financing Code Part III (c) Regulatory Code Part 2 Division 8, Anti Money Laundering and terrorism Financing Code Part II (d) see (c) above (e) AMLR r. 9, Anti Money Laundering and Terrorism Financing Code Part III

OGBS Statement Requirement	BVI Legislative Provisions
<p>Countries to make proper provision for ensuring:</p> <p>(a) Clients interest protected if service provider cannot carry out business;</p> <p>(b) Experienced external auditors appointed to carry out full audit of business;</p> <p>(c) Independent reviews to be carried out to assess compliance with Statement of Best Practice, with appropriate sanctions.</p> <p>(d) Service provider to be embraced by national AML legislation</p>	<p>See:</p> <p>(a) FSCA Part V particularly s. 39 and Guidance Notes on Revocation or Suspension including Solvent Liquidations, Insolvency Act</p> <p>(b) Regulatory Code s. 56 and 57, Guidance for Approved Persons Regime;</p> <p>(c) Compliance Inspections will move to meeting this requirement once the Regulatory Code is fully implemented and enforced;</p> <p>(d) AMLR and the Anti Money Laundering and Terrorism Financing Code</p>
<p>Consideration of low risk areas</p>	<p>The jurisdiction has applied a lighter touch to certain areas of business. For example, restricted trust licensees which do not carry out companies management business are not required to hold capital.</p>