

**OFFSHORE GROUP OF BANKING SUPERVISORS TRUST AND
COMPANY SERVICE PROVIDERS WORKING GROUP REPORT**

**SECURING EFFECTIVE EXCHANGE OF INFORMATION
AND SUPERVISION**

In respect of

TRUST AND COMPANY SERVICE PROVIDERS

December 2004

CONTENTS

Section	Title
1.	Remit
2.	Existing Restrictions on the flow of information
3.	Correlation between Ownership/Control and Supervisory oversight
3.1	T&CSP business conducted by banks, including through their branches or subsidiaries
3.2	T&CSP businesses which hold another form of financial services licence or are subsidiaries or branches of financial services businesses and which hold a financial services licence either locally or in another jurisdiction
3.3	T&CSP businesses which are subsidiaries or branches of T&CSP businesses based in another jurisdiction.
3.4	T&CSP businesses whose principals are subject to disciplinary oversight by a relevant professional body in respect of their T&CSP activity but are not otherwise regulated and are not part of a group.
3.5	T&CSP businesses which operate in jurisdictions that have no regulation of this sector and do not fall into any of the previous categories.
3.6	Observations relating to 3.1 – 3.5 above
4.	Exchange of Client information
5.	Conventions
6.	Recommendations
7.	Appendices
A	Definition of Trust and Corporate Service Provider
B	Tabulated format showing extent of existing consolidated supervision and degree of exchange of information in place in Crown Dependencies and Gibraltar.
C	Blank format for completion by other OGBS members

REPORT

1. REMIT

At the meeting of the OGBS Trust and Company Service Providers' Working Group held on the 8th January 2003, it was agreed that a paper should be prepared on the following matters relating to Trust and Company Service Provider ("T&CSP") business:-

- existing restrictions on the flow of information;
- the necessary gateways for effective consolidated supervision; and
- whether information exchange should be restricted to information on the trust and company service providers (T&CSPs) rather than their clients.

There is no generally accepted definition of what constitutes T&CSP business. However, a list of the activities typically undertaken by T&CSPs, based on the OGBS Statement of Best Practice for Trust and Company Service Providers dated 6 September 2002, is contained in Appendix A.

Delegates from the Isle of Man, Guernsey and Jersey were invited by the Chairman to complete this task and the Group invited Gibraltar to join them as the four jurisdictions have broadly similar regimes and numerous shared T&CSP businesses. The Group met in Gibraltar on 24 and 25 March 2003, in London on 8th December 2003 and in the Isle of Man on 20 July 2004.

Despite the lack of prudential supervision in most jurisdictions, the sector has been identified in the revised FATF 40 Recommendations as a sector which should comply with the full due diligence and record keeping requirements in FATF Recommendation 12. Whilst some jurisdictions do require T&CSPs to comply with Recommendation 12, few undertake any compliance testing.

The first meeting therefore began with detailed discussion on how best to tackle the task in hand. The following framework was established:-

Firstly, to determine a matrix showing the characteristics of T&CSP business ownership on one axis, contrasting with how T&CSP businesses are currently subject to supervision, if at all.

Second, to consider existing regulatory models;

Thirdly, to address the key tasks within the remit, namely identifying restrictions on information flow and necessary gateways for the purpose of effective consolidated regulation.

Finally, the Group addressed the question of whether the gateways should relate solely to the T&CSP businesses, or extend to their client bases.

2. EXISTING RESTRICTIONS ON THE FLOW OF INFORMATION

The Group concluded that there were significant restrictions on the flow of information in this sector.

The restrictions arise for a number of reasons springing largely from:-

- a lack of a universally accepted and understood definition of what constitute trust and corporate services;
- the very diverse range of ownership and control of the entities that might be carrying out the activity of a T&CSP; and
- according to the nature of that ownership and control, a correspondingly diverse range of regulatory controls and oversights which may already be in place. These range from (in the case of activity carried on by a bank) full consolidated supervision, to (in the case of the activity carried on by an independent small company) no supervisory oversight at all in most jurisdictions of the world.

This fractured and unreliable pattern of supervision renders effective co-operation unlikely and, in the opinion of the Group, represents a significant weakness in the global defences against money laundering and the financing of terrorism, as well as a genuine lack of customer protection in respect of the sector's clients.

Accordingly, the first task of the Group was to “map” the most frequent range of ownership and controls of the entities conducting T&CSP business, and then to analyse whether there was any correlation between ownership and supervisory oversight.

A clear framework emerged which the Group found most valuable.

3. CORRELATION BETWEEN OWNERSHIP/CONTROL AND SUPERVISORY OVERSIGHT

The market sector offering Trust and Corporate Services continues to grow across the world. Although the sector is not generally recognised as providing “financial services” or treated as comprising regulated activity in the majority of jurisdictions, elements of responsibility do nevertheless currently extend to a range of supervisory organisations as a result of the ownership and control of T&CSPs.

The five main characteristics of ownership and control and their associated trends of regulatory supervision can be summarised as follows:-

3.1 T&CSP business conducted by banks, including through their branches or subsidiaries.

This category should already be subject to regulatory oversight in accordance with the Basel principles, which include both consolidated supervision and effective exchange of information.

However, the observation of the Group was that such oversight is often not discharged effectively. This is perhaps not surprising, as many Home State supervisors do not see themselves as regulating T&CSP business, even though, under the Basel principles, the prudential responsibility for the banking group rests with the Home State supervisor.

Three key risks arise from this:

- the Home supervisor seldom takes this area of activity into account;
- as a result, this activity and, in particular, the risk arising from conduct of business, habit and practice, is not taken into account when assessing the risk profile of the group; and
- in any event, the Home supervisor may not have the specific competences required to undertake effective supervision of the sector.

The Group recommends that Home State supervisors should be made aware of these potential lacunae and the risks likely to arise from them. The Group further recommends that banking supervisors should recognise that specific competence is required for the effective oversight of T&CSPs.

Typical structures in this category would include (for the purposes of illustration):-

3.1.1 a T&CSP which is a branch or subsidiary of a locally licensed bank

For example, a Jersey licensed T&CSP, which is a wholly owned subsidiary of a Bank that is licensed to conduct banking business in Jersey and is also a subsidiary or branch of a UK bank.

In this case, the FSA (as Home Supervisor) would have consolidated supervisory responsibility for the Jersey-based T&CSP as well as the bank’s overall activity including, for example, investment business.

The FSA and Jersey FSC (as Home and Host supervisors) can exchange information under existing inter regulatory gateways as banking supervisors. Local regulation of T&CSP activity is thus not necessary to secure effective Cross Border supervision.

That local T&CSP regulation exists in Jersey is co-incidental and is not a critical factor for the purpose of securing exchange of information. However, the absence of local T&CSP regulation would significantly reduce the quantity and quality of the information which could be exchanged, particularly in respect of local operational risk.

It is important to note that inter regulatory gateways tend to work on the basis of supervisors being allowed to exchange information with “equivalent supervisors”. In this respect, although the Jersey FSC does regulate T&CSP activity and has appropriate legislation in place, the FSA of course does not. Where the Jersey FSC has information regarding the local T&CSP activity of that banking licence-holder subsidiary, they would pass it to the FSA under a Banking regulatory gateway and in accordance with both the MOU in place and within the spirit of Basel principles. However, the effectiveness of such exchange reduces considerably as the “equivalence” of the regulatory authorities diminishes.

3.1.2 a T& CSP which is a subsidiary of an overseas bank that is not conducting banking business locally

For example, a Guernsey T&CSP which is a wholly owned subsidiary of an overseas Bank which is licensed in Luxembourg but does not itself operate as a bank in Guernsey.

In this case, although the Luxembourg (Home State) supervisor has responsibility for the consolidated activity of the banking group, including the subsidiary trust company, if there were no Guernsey regulation of T&CSPs, there would be no basis for an established relationship between the Luxembourg banking supervisors and the Guernsey FSC in respect of this entity. As a result, the responsibility of the Home State supervisor may not be effectively discharged.

In practice, as Guernsey does regulate T&CSP activity, vital conduct of business information is available to the Luxembourg authorities to assist them in their functions. However, because of the three key risks highlighted above at 3.1.1, the Luxembourg regulator may not maintain full information on the T&CSP business, may restrict its interest to the prudential level and may not give adequate attention to local conduct of business risks.

As in the previous example, the Guernsey and Luxembourg supervisors can exchange information under existing inter regulatory gateways as banking supervisors. Local regulation of T&CSP activity is again not necessary to establish a gateway but is vital if the information passing through it is to be of real value to Luxembourg in their assessment of the banking group.

General Observations regarding 3.1.1 and 3.1.2 above

Where the Host supervisor does not directly regulate T&CSP activity, it can still normally co-operate with the Home supervisor on a banking regulator to banking regulator basis. Most banking laws provide for mutual assistance and generally this assistance is not dependent upon the local operation in the Host state being licensed as a bank. However, this capacity to exercise local banking supervisory powers in response to a request from a fellow regulator in respect of a local non-bank activity, is not a universal power and the potential lacuna which this lack of uniformity creates is significant and should be addressed.

In both the above cases, although local regulation of the T&CSP activity is not a necessary pre-requisite for exchange of information, local supervision of the T&CSP sector is of great assistance, as the local regulatory authority will have a wealth of information about the local operation which it is unlikely to have if it is not carrying out day to day supervisory functions.

It was the experience of the Group that Home state supervisors often have little understanding of the operational risk arising from T&CSP activity. For example, the significant potential financial liabilities that can arise from acting as trustee in respect of unsound structures, or where trustees have failed in their duty to beneficiaries. Similarly, Home State supervisors are often unfamiliar with the particular risks arising from company administration, for example, insider dealing, false invoicing, illegal commissions payments, tax evasion and money laundering. The reputational and prudential risks arising from these areas should not be underestimated.

It was the experience of the Group that Home State supervisors tended to concentrate on financial information only, and were unfamiliar with the particular risks, which can arise in this sector and unclear how to test and monitor the existence of adequate controls in this area.

The Group therefore concluded that T&CSP subsidiaries, which do not hold a local banking or T&CSP licence were potentially high risk and therefore recommends that their scrutiny by their Home State supervisors should be significantly increased.

3.2 T&CSP businesses which hold another form of financial services licence, or are subsidiaries or branches of financial services businesses and which hold a financial services licence, either locally or in another jurisdiction

This category relates to T&CSP owned or controlled by investment, fund manager or insurance companies which are themselves regulated in the same or other jurisdictions, for example, an Isle of Man T&CSP, which is a subsidiary of an investment business company licensed in Hong Kong.

The existence of regulatory oversight in Hong Kong is of some practical comfort at the application stage where Isle of Man FSC is considering a new T&CSP applicant. However, there is no regulation of T&CSPs in Hong Kong and, where this is the case, the Home State regulatory authority (in this case Hong Kong) may be unable or may fail to provide full background information in regard to the fit and proper status or

regulatory track record of the principal persons as a result of the same key risk areas highlighted at 3.1.1 above. Post licensing there appears to be relatively little continuing regulatory liaison.

The observation of the Group is that the lack of initial information or continuing dialogue arises from the absence of a consolidated supervision tradition for non-bank financial services.

The Group recommends that this absence should be addressed because operational risks incurred in the regulated parent may be transferred to or hidden in the T&CSP business (and vice versa) unknown to either regulatory authority. As a result, unacceptable practices or financial risks may be concealed.

This absence of a proactive dialogue between regulators provides opportunity for the concealment of various risks including:-

- Principal dealing on own account
- Offloading losing deals
- Front running
- Insider dealing
- Other market manipulation
- Fraud

Communication and effective co-operation between regulators may also be hampered as many Home State supervisors of the regulated investment business parent company would not consider the regulator of the T&CSP subsidiary company as an equivalent regulator, and indeed according to the gateway arrangements in the Host jurisdiction, that regulatory authority may have difficulty passing information to what would, in Basel terms, be deemed the Home regulator.

The Group recommends that this significant risk is brought to the attention of the IAIS and IOSCO relevant committees and a means sought to rectify these deficiencies.

3.3 T&CSP businesses which are subsidiaries or branches of T&CSP businesses based in another jurisdiction.

For example, a UK T&CSP which is a subsidiary of a Swiss fiduciary.

In this type of ownership, the group is not subject to Home State supervision of any description in Switzerland (Home State) and will not have local supervisory oversight in the UK.

By contrast, if the subsidiary were based in Gibraltar and the parent in the Isle of Man, as both jurisdictions have a local regime of T&CSP regulation effective consolidated supervision would be possible.

The observation of the Group is that regulation in this area is a welcome and important improvement of regulatory oversight and that work should be continued to extend the areas of consolidated supervision and effective information exchange.

The Group members agreed between themselves during 2002 to voluntarily adopt the Basel principles of consolidated supervision in respect of T&CSP activity being conducted across the four jurisdictions.

To date the model is holding up well and MOUs have simply been amended to add T&CSP activity to the list of regulated activity on which established co-operation already exists. Fortunately, in each jurisdiction gateways are robust and a habit of mutual assistance has long existed.

At a practical level, identification of parent and subsidiary is working well in the four jurisdictions, each of which requires detailed organisation charts as part of their respective application processes. However, establishing the existence of sister company operations in other jurisdictions can be more problematic because regulators must of necessity rely on the information provided by the local applicant. This information may not be complete in that the local applicant may not be aware of:-

- other subsidiaries held by the same parent, or
- another company held personally or through a different ownership structure by the same principals outside the group structure.

The absence of consolidated supervision principles outside the area of banking supervision would appear to compound these problems in the case of non banking financial services businesses. (See 3.2 above).

The Group recommends that those jurisdictions that currently regulate T&CSP business, or those that introduce such regulation, adopt a model that embraces the Basel consolidated supervision principles. It should also be recognised that until regulation of this sector becomes universal, significant lacunae and therefore regulatory risks will remain.

3.4 T&CSP businesses whose principals are subject to disciplinary oversight by a relevant professional body in respect of their T&CSP activity but are not otherwise regulated and are not part of a group.

This category relates to those T&CSPs, which are owned and/or controlled by accountants or lawyers who, in their professional capacity, would be subject to the oversight of a professional body (e.g, the Law Society of England and Wales or ICAEW).

The observation of the Group is that, where the T&CSP activity is undertaken through a separately incorporated T&CSP company (as is often the case), the professional body has paid little or no regard to the conduct of that business.

The Group also found that the treatment by professional bodies of monies held in trust (i.e. in their capacity as trustees) by lawyers or accountants was inconsistent. As a result, it could not be assumed that the rules regarding conduct of client money issued

by professional bodies automatically covered trust assets. In some jurisdictions it appears they do, but in others, the rules do not extend that far. Others again specifically state that trust assets must not be mixed with, say, law firm client money. Additional variations on the applicability of the rules may occur depending upon whether the T&CSP business is conducted by the professional practice itself or through a “subsidiary” operating company. Where the professional societies’ client account rules do not apply, or are not enforced, the T&CSP will also not be subject to their oversight visits or audit provisions.

The Group also noted that no visits are conducted nor oversight exercised by the Law Society of England & Wales or the Institute of Chartered Accountants of England & Wales in respect of their members’ client accounts where business is carried on outside the United Kingdom.

These are very significant lacunae.

This is a matter of concern to the Group given that so many jurisdictions would argue that their professionals are already adequately regulated and it is on the basis of this argument that some jurisdictions offer exemptions to professionals from local T&CSP legislation, or believe that no regulation is necessary.

In the broader context of, for example, a UK firm of lawyers licensed by the FSA for investment business with a T&CSP operation run through a wholly owned company in Guernsey, the “Home jurisdiction” lawyer or accountant “parent firm” or principals are supervised by the FSA in the conduct of investment business, but the Guernsey FSC, as “Host Supervisor” endeavouring to evaluate an application for a T&CSP licence, may be unable to obtain full information regarding that investment business, or its principals, for the reasons set out in 3.2 above, namely that a T&CSP supervisor and an investment business supervisor may not be deemed “equivalent supervisors” in the gateway provisions of either authority..

The Group recommends effective exchange of information is established with professional bodies and that the recommendation at 3.2 above is applied to this section additionally.

3.5 T&CSP businesses that operate in jurisdictions that have no regulation of this sector and do not fall into any of the previous categories.

This category includes T&CSPs that have moved from jurisdictions which do regulate T&CSPs to other jurisdictions which do not, perhaps for the purpose of avoiding regulation. In reality, this category embraces the majority of T&CSP businesses owned or run by accountants and lawyers as those businesses are not in fact subject to oversight by the relevant professional body for the reasons specified in 3.4 above.

These firms often represent the very highest risk. Although entirely unregulated, they act as major introducers to the regulated financial services sector and provide the complex structures so vulnerable to abuse.

Members of the Group had found in their own jurisdictions that firms falling into this category gave rise to a significant number of regulatory problems and were less likely

to have available to them the financial backing or technical resources to resolve satisfactorily any problems that arose. Some members of the Group had experienced instances where firms falling into this category were owned and run by individuals that local or international regulatory authorities/professional bodies had already disqualified or disciplined.

All members of the Group had experiences of this type of firm moving from their jurisdictions when T&CSP regulation had been introduced. Typically, the exiting firms have now moved to “onshore” jurisdictions that, mostly, still appear undecided in their plans to regulate this sector.

The lack of prudential supervision of this category represents a serious lacuna in the anti money-laundering regime of jurisdictions which do not regulate this sector.

The Group strongly recommends that regulation of this sector be introduced. However, where a jurisdiction does not plan to introduce regulation of this sector, the Group recommends at least that responsibility should be allocated to a competent authority (preferably one with gateways to exchange information with regulators of this sector in other jurisdictions) to ensure such T&CSPs are monitored for compliance with anti-money laundering legislation and legislation designed to combat the financing of terrorism.

The Group discussed whether this last recommendation could reasonably be considered within its remit. It concluded that because a T&CSP falling within category 3.5 could be a sister company or parent of a regulated T&CSP that the recommendation was indeed within remit insofar as it may assist in the establishment of effective exchange of information and the achievement of consolidated supervision objectives.

3.6 Observations relating to 3.1 – 3.5 above

The Group found that basing its considerations on the ownership structure of the T&CSP entities provided an effective basis for the analysis of regulation of the sector. Whilst there is a tendency to categorise regulation on the basis solely of the type of business carried on by the licenceholder, banking regulation is conducted on a Group basis and therefore embraces (or should embrace) the risks arising from non-banking activity carried out by subsidiaries of banks. As this is a very familiar regulatory model to supervisors, it proved of great assistance in finding a “key” to this topic, and appears to work well, even under fairly detailed analysis.

The categories of ownership described in 3.1 – 3.5 above have been placed within a matrix at Appendix B which specifically tabulates the parameters of consolidated supervision and exchange of information.

This table is completed in a manner that reflects the gateways and levels of consolidated supervision currently in place in jurisdictions represented by the Group. A blank matrix is attached at Appendix C and the Group would request other OGBS Working Group members similarly complete the matrix and return it to their Chairman, Colin Powell. Further scrutiny of the model can then be undertaken.

4 EXCHANGE OF CLIENT INFORMATION

The Group was asked to consider whether information exchange should be restricted to information on T&CSP businesses only or should also extend to their clients.

In this context, the Group considered:-

- legitimate client confidentiality;
- issues of abuse of process; and
- proportionality.

It was concluded that where a request for inter regulatory assistance was received from another regulatory authority, the request should be considered on its own merits and the appropriate information gathering power and/or gateway used, depending on the circumstances of the case.

T&CSP supervisors have access to a wide variety of confidential information relating to T&CSP businesses themselves and their clients. Such access to client information may be limited (whether expressly or by implication) to the purpose of regulation of the T&CSP. At present the ability of regulators to exchange any such information may therefore depend on the purpose for which the information is sought and the legislative provisions in force in the relevant jurisdiction.

In the regulatory context, it is important to begin consideration of a request for assistance with an evaluation of the capacity of the requesting authority and to be sure to service that request in the correct reciprocal capacity.

For example, where a requesting jurisdiction seeks assistance in respect of a structure managed by a T&CSP which is apparently conducting unlicensed investment business, the requesting jurisdiction would be likely to seek assistance as an investment business supervisor. In most jurisdiction models considered by the Group, it would be important for the requested authority (the jurisdiction in which the T&CSP was located) to treat the request as one made to it as an investment business supervisor and use its powers of co-operation under its investment business regime.

The reason for this is, as set out in 3 above, that it is possible that the requesting jurisdiction will not regulate T&CSP activity and therefore would not meet the “equivalent supervisor” test. However, this issue may be less of a problem than was once thought following a decision by the Supreme Court in Gibraltar, that in order to satisfy the “equivalent supervisor” test, it is sufficient that there is a significant overlap between the functions of the requesting and requested authority.

The Group recommends that regulators should have power to exchange information relating to both T&CSP businesses and their clients with financial services regulators with significantly overlapping functions on a “regulator to regulator” basis where such exchange is necessary for regulatory purposes. Where information is required for other purposes (e.g. in relation to criminal prosecutions), it should be secured by the appropriate routes available to law enforcement and prosecution authorities, such as provisions for mutual legal assistance in criminal matters.

5 CONVENTIONS

Wherever relevant, the Group used as the starting point for its considerations the following documents issued by the Basel Committee for the supervision of international banking Groups:-

- Principles for the supervision of Bank's Foreign Establishments (May 83)
- Minimum Standards for the supervision of international banking Groups and their cross border establishments (July 1992)
- The supervision of Cross-Border Banking (October 1996)
- Essential elements of a statement of co-operation between banking supervisors (May 2001)

The Group noted that numerous jurisdictions have already assumed responsibility for the prudential supervision of subsidiaries conducting fiduciary business, but that many of these lacked the formal powers and practical means for effective supervisory oversight of these activities.

Therefore the Group focused on producing a policy and supporting documentation, which would enable regulatory authorities, whether or not they directly regulate trust and company service providers, to fulfil these responsibilities.

The Group would like this paper to be considered by a wider audience, to receive further templates of other models and then to produce model policy documents that others might usefully use to improve effective cross border supervision.

6 RECOMMENDATIONS

Recommendation 1

Whilst banking supervisors are already responsible for oversight of activity within groups under their supervision, including T&CSP activity, and are able to utilise existing gateways, they may care to consider whether:

- 1.1 T&CSP subsidiaries, or branches of banking groups, whether or not such subsidiaries or branches are subject to local regulation, represent potentially higher risk; and should be satisfied that an appropriate level of supervision is in place; and
- 1.2 their current supervisory staff hold the specific competencies required for the effective oversight of T&CSPs.

Implementation of this recommendation could be encouraged by OGBS members, either in their capacities of banking supervisors, or as T&CSP supervisors, ensuring they make contact with the Home State regulatory authority and informing that authority of the subsidiary(ies) operating in the OGBS member's jurisdiction and asking for a contact name with whom to establish relations.

Recommendation 2

Regulatory authorities should give consideration to the extension of consolidated supervision beyond the areas of banking business in order to address the risks identified in paragraph 3.2 above.

This could be achieved by bringing this to the attention of the relevant IAIS and IOSCO committees and encouraging the adoption of policies/procedures such as:-

- ensuring legislation provides gateways to home state supervisors;
- including T&CSP business in all Memoranda of Understanding;
- adopting the principles of seeking regulatory references from home state supervisors at the time of licensing;
- establishing relations and maintaining contact with home state supervisors including sharing key findings from visits, investigations, reports, etc.

Recommendation 3

Those jurisdictions that currently regulate T&CSP business, or those that introduce such regulation, should adopt a regulatory model that embraces the Basel consolidated supervision principles.

This could be achieved through the same means as outlined in Recommendation 2 above.

Recommendation 4

Effective exchange of restricted information should be established with professional bodies.

This could be achieved by adopting an appropriate “gateway” or permitted disclosure of restricted information.

Recommendation 5

Regulation of the T&CSP sector should be introduced by those jurisdictions that have not already introduced such regulation, unless they are satisfied that the oversight of AML standards, and the effective exchange of information on AML and other matters can be adequately achieved by other means.

Recommendation 6

The exchange of regulatory information in relation to clients of T&CSPs should apply in the same manner as existing exchange of regulatory information applies to banking customers. Namely, that no special secrecy provisions are extended to these customers, but that they are entitled to normal legitimate client confidentiality until such time as an equivalent supervisor submits a legitimate request for assistance or in the event that any regulatory breaches are discovered..

This can be achieved by ensuring local legislation is structured in a way that ensures legitimate client confidentiality prevails other than in the face of a regulatory enquiry, which would be serviced on a regulator to regulator basis, or in the face of a criminal enquiry in which case it would be serviced via the relevant Attorney General or “Central Authority” procedure. Current models to this effect can be seen in Jersey, Guernsey, the Isle of Man and Gibraltar.

Trust and Company Service Provider Business

Trust and Company Service Providers are typically businesses that offer to the public one or more of the following services:

- Acting as a company or partnership formation agent
- Acting as (or arranging for another person to act as) a director or secretary of a company or a partner of a partnership
- Providing a registered office, business address or accommodation, correspondence or administrative address for a company, partnership or for any other person
- Acting as (or arranging for another person to act as) a trustee of an express trust
- Acting as (or arranging for another person to act as) a nominee shareholder for another person
- Providing company administration services or trust administration services;
- Arranging the establishment of, or providing services corresponding to any of the above in relation to, any legal entities not covered by the foregoing (e.g. a foundation or anstalt).

APPENDIX B**TABLE 1****T&CSP OWNERSHIP/CONTROL AND SUPERVISORY OVERSIGHT
TABLE**

Supervisory Type	TCB conducted by	Mechanism for	
		Consolidated Supervision	Exchange of Info
Category A Basel	Bank holding Banking licence (or a sub or Branch of such a bank)		
IOM – 19 (all locally Licensed banks)			
Gsy – 34			Yes
Gib – 6			Yes
Jsy – 19	a) in that jurisdiction, or	Yes	Bs to bs Yes
	b) elsewhere	Yes	Bs to bs
Jsy – 27			
Category B Fully Regulated in Accordance with OGBS Principles	T&CSP licence (or a subsidiary or branch of such a T&CSP)	No	Yes ⁽¹⁾
IOM – 78			
Gsy – 93			
Gib – 74			
Jsy – 131			
Category C	Non Banking financial Services licence (or a sub or Branch of such an entity)		
Non Basel regulated principles	a) in that jurisdiction, or	No	Yes
IOM – 16			
Gsy – 17			
Gib – 2			
Jsy – 20	b) elsewhere	No	No ⁽²⁾

Category D

Principals subject to professional Body rules in respect of T&CSP Activity IOM – 46 (mainly accountants) Jsy – Nil

T&CSP not licensed (or a subsidiary or branch of such as T&CSP

a) in that jurisdiction, or No

No

b) elsewhere

No

No

Category E

Not supervised Jsy - Nil

Other

No

No

Footnotes

¹ Exchange of information will be facilitated where regulation of T&CSP has been introduced into a jurisdiction.

² Exchange of regulatory information is normally dependent upon the concept of “equivalent regulatory authority”. In this context it would appear the regimes within the four jurisdictions may differ slightly. Guernsey view the equivalence is based on overall function. Thus, insofar as Guernsey is a supervisor with responsibility for banking, investment, funds, insurance and T&CSP business, they would take the view that for example the UK FSA is an equivalent supervisor in that the FSA has a largely equivalent function. A recent decision of the Supreme Court of Gibraltar has confirmed that it is sufficient in Gibraltar that there is “significant overlap” between the functions of the Gibraltar FSC and the overseas regulatory authority. In the Isle of Man, s.24(5)(b)(iii) of the Financial Supervision Act 1988 states that the IOM FSC may disclose information for the purposes of enabling or assisting an “authority” to exercise functions corresponding to ANY of those of the IOM FSC” under the banking, investment business or CSP Acts (i.e. any of its functions). The Isle of Man FSC would take the view therefore that it would be within its powers to disclose CSP information to a regulator in a jurisdiction which regulated banks but not CSPs.

APPENDIX C

TABLE 2

**T&CSP OWNERSHIP/CONTROL AND SUPERVISORY OVERSIGHT
TABLE**

Supervisory Type	TCB conducted by	Mechanism for Consolidated Supervision Exchange of Info	
Category A Basel	Bank holding Banking licence (or a sub or Branch of such a bank) a) in that jurisdiction, or b) elsewhere	<u>Please complete</u>	
Category B Fully regulated in accordance with OGBS principles	T&CSP licence (or a subsidiary or branch of such a T&CSP)		

Category C
Non Basel
regulated principles

Non Banking financial
Services licence (or a
sub or Branch of such an
entity)
a) in that jurisdiction, or

b) elsewhere

Category D
Principals **subject**
to professional
body rules in
respect of T&CSP
Activity

T&CSP **not licensed** (or
a subsidiary or branch of
such as T&CSP
a) in that jurisdiction, or

b) elsewhere

Category E
Not supervised

Other

Footnotes

¹ Exchange of information will be facilitated where regulation of T&CSP has been introduced into a jurisdiction.

² Exchange of regulatory information is normally dependent upon the concept of “equivalent regulatory authority”. In this context it would appear the regimes within the four jurisdictions may differ slightly. Guernsey view the equivalence is based on overall function. Thus, insofar as Guernsey is a supervisor with responsibility for banking, investment, funds, insurance and T&CSP business, they would take the view that for example the UK FSA is an equivalent supervisor in that the FSA has a largely equivalent function. A recent decision of the Supreme Court of Gibraltar has confirmed that it is sufficient in Gibraltar that there is “significant overlap” between the functions of the Gibraltar FSC and the overseas regulatory authority. In the Isle of Man, s.24(5)(b)(iii) of the Financial Supervision Act 1988 states that the IOM FSC may disclose information for the purposes of enabling or assisting an “authority” to exercise functions corresponding to ANY of those of the IOM FSC” under the banking, investment business or CSP Acts (i.e. any of its functions). The Isle of Man FSC would take the view therefore that it would be within its powers to disclose CSP information to a regulator in a jurisdiction which regulated banks but not CSPs.