

“Effectiveness” in the context of the GIFCS Standard for TCSPs

This document addresses the measurement of effectiveness in support of the Standard established by the Group of International Finance Centre Supervisors (“GIFCS”).

A working group meeting in April 2017 noted that the Standard set a range of objectives. Some of these should be enforceable in law, but others should take account of regulatory policy and implementation in practice. The consensus of the working group was that “effectiveness” could where relevant be addressed by allowing the assessed jurisdiction to demonstrate an equivalent outcome where the letter of the Standard is not met.

The working group’s discussion contrasted the Standard with the FATF 40 Recommendations. The measurement of effectiveness in applying the FATF 40 Recommendations is orientated towards law enforcement and criminal sanctions, because the aim of the FATF 40 Recommendations is to prevent or reduce criminal activity (money laundering, financing of terrorism and the proliferation of weapons of mass destruction). The GIFCS Standard in contrast includes civil matters such as enhanced customer protection, good corporate governance and financial soundness.

Key Objective

The key objectives of the Standard in respect of effectiveness are:-

- Customers of TCSPs should receive a degree of protection equivalent to that afforded to the customers of other financial institutions¹;
- The regulatory system should provide for an effective and credible use of inspection, investigation, surveillance, enforcement powers and sanctions and implementation of an effective compliance programme²;
- The Regulator should require that a TCSP’s affairs are conducted in a prudent and financially sound manner³; and
- The Regulator should require that a TCSP is and remains resourced, structured and organised appropriately so that it can manage all vehicles and assets it administers. This requirement should address policies, procedures and controls, staff capabilities and the numbers and types of appointments to Vehicles⁴.

¹ “Guidance on the use of this document”

² Part 2 Paragraph 4.3

³ Part 3 paragraph A 4 (extract)

⁴ Part 3 paragraph A 6 (extract)

Principal themes of the assessment of effectiveness

The Standard states that:

The Regulator should adopt transparent, clear and consistent regulatory processes⁵.

Examples of factors which might evidence the processes of the Regulator include:

- Implementing a risk-based approach based on a thorough understanding of the different risks arising;
- Evidencing that it has and applies suitable procedures for supervision and enforcement actions;
- The level of resources available for supervision and enforcement (numerical and in terms of experience and seniority);
- The frequency of on-site inspections;
- The scope of on-site inspections (evidence of planning and relevance to risk);
- The scale of on-site inspections (time, duration, seniority of staff);
- The monitoring of follow-up actions by the TCSP on a timely basis;
- The nature and extent of desk-based supervision;
- Cooperation with law enforcement agencies.

The effectiveness of intervention would be grouped under the following themes. The purpose would be to evaluate the level and nature of engagement between the supervisor and licenceholder. Where applicable, a regulator should be able to evidence some or all of these measures being used. However, as noted above, some might not be applicable to a particular aspect of the Standard:

1. **Persuasion:** Including guidance, feedback, information, presentations and equivalent measures which give strong encouragement to good practice, discourage bad practice, or highlight risks as perceived by the regulator. However persuasion would not be a substitute for more formal action as set out in 1-6 above where this was clearly warranted;
2. **Requirements to take action:** Remediation plans following visit reports, directions and equivalent measures which require firms and individuals to take specific actions (or to refrain from specific actions) within stipulated timeframes;
3. **Civil penalties:** Including fines and restitution;
4. **Sanctions against individuals:** “Not fit and proper” findings and equivalent sanctions which prevent individuals from taking part in regulated activities;
5. **Suspension of a licence:** Suspension of a licence and equivalent forms of intervention which result in suspension of regulatory activity, or a third party assuming responsibility for its management;
6. **Revocation of a licence:** Revocation of a licence and equivalent forms of intervention which result in closure of the business;
7. **Sanctions:** Prosecution where a criminal offence has been committed.

⁵ Part 2 Paragraph 1.5

Other considerations

A regulator should be able to demonstrate that it has been proportional in its interventions. One route to address this might be to address punitive and serious sanctions in the context of what cases have arisen for which such sanctions might have been applied; and if sanctions were not applied in those cases, why not? Was it because sanctions were not merited, or because other factors intervened, such as legal, cultural or resource constraints? Based on discussions with the assessed jurisdiction it would be for the assessing team to form a view on how effectively different requirements and measures were being applied to secure a successful outcome.

In addition to the principal themes above, there is a general challenge of how to measure effectiveness in a regulatory context. Ideally the effectiveness of regulators would be evaluated by outcomes (harms prevented) rather than by inputs (interventions). In addition, the assessment includes preventative measures and a positive consequence of preventative measures should be that there are fewer serious sanctions applied. The focus should be to consider what outcomes are being achieved.