

COMMITTEE ON BANKING REGULATIONS
AND
SUPERVISORY PRACTICES

BS/81/16
2nd revision

Banking secrecy and international co-operation
in banking supervision

Effective internationally co-ordinated supervision of banks must rest on two foundations: national systems capable of supervising their banks' international business; and a willingness on the part of national authorities to co-operate in monitoring the activities of the overseas establishments of their own banks and of the establishments of foreign banks in their own territories. Co-operation cannot be complete unless effective arrangements exist for the exchange of information between supervisory authorities about banking activities within their own jurisdictions on a confidential basis.

The two main features of the Basle Committee's approach to international banking supervision are the 1975 Concordat on international supervisory co-operation and the adoption of the principle that banks' international business should be monitored by parent authorities on a consolidated basis. The implementation of the principles both of the Concordat and of the consolidation of banks' international business, as well as the effective use of the various prudential techniques available for monitoring banks' worldwide operations, require a flow of information across national borders between banks and supervisors and between supervisors themselves. Problems can arise, however, because banking secrecy laws or regulations in some countries can impede such flows of information and this paper sets out the Basle Committee's views on how these problems can be overcome. The conclusions reached in Basle have already found a broad measure of agreement in principle among various countries not represented on the Committee, in particular among those representatives from offshore centres who met at the BIS in October 1980.

The problems which may arise for international supervisory co-operation as a consequence of bank secrecy laws or regulations are of four kinds: problems relating to flows of information from banks' foreign affiliates to their parent institutions; problems relating to flows of information about the operations of banks' foreign affiliates from parent institutions to parent supervisory authorities; problems relating to flows of information between host and parent supervisory authorities; and problems relating to the verification by parent authorities of information received about their banks' foreign affiliates.

a) flows of information from banks' foreign affiliates to their parent institutions

In the case of banks' foreign branches there should in general be no impediment to such flows of information, but the situation may be different in the case of foreign subsidiaries and other legally independent foreign affiliates. Banking secrecy regulations in some host countries may not allow the transmission of certain kinds of information, e.g. data on the balances of individual customers, from foreign affiliates to their parent banks. Such regulations may also present difficulties for parent banks' inspections of their foreign affiliates. It is desirable that arrangements should exist in all host countries which enable parent banks to have access to all necessary information about the operations of their foreign affiliates. Transmission of such information should, of course, be on the understanding that the parent bank itself undertakes to maintain the confidentiality of the data submitted and to make them available only to the parent supervisory authority.

b) flows of information from parent banks to parent supervisory authorities

As a rule, parent authorities receive information about the operations of their banks' foreign affiliates from the parent bank concerned. Parent banks can be reluctant to transmit such information to their own authorities either where the parent authority's reporting requirements go beyond those which are in force in the host country, or

where the secrecy provisions which apply to the parent authority are less stringent than those in force in the host country. For these reasons the law in the parent country should fully protect the confidentiality of such information that is passed to the parent authority and should limit its use to supervisory purposes. It should also be borne in mind that it is in the interests of the host authority that the parent authority be adequately informed about the activities of its banks' foreign branches, subsidiaries and other affiliates.

c) flows of information between host and parent authorities

Exchanges of information between host and parent authorities can be important for the exercise by both of their respective supervisory responsibilities, particularly where information flows under (a) and (b) above are considered inadequate. Both host and parent authorities should therefore ensure that, subject to reciprocity and appropriate confidentiality, such exchanges at reasonable intervals are not hampered by banking secrecy laws and regulations.

d) verification by parent authorities of information received about their banks' foreign establishments

Such verification can be carried out in any one of three ways: by the host authority itself, acting on behalf of the parent authority; by external auditors appointed either by the host authority or by the parent authority with the host authority's consent; or through on-the-spot examinations by the parent authority. It is essential that information which parent authorities receive about their banks' foreign establishments be open to verification in one of these three ways.

Conclusions

Constraints on effective international co-ordination of banking supervision that arise out of banking secrecy laws or regulations cannot be removed easily or quickly, since in some cases they derive from deeply-rooted legal or other factors in individual countries. However, existing national laws on banking secrecy were mostly drawn up when

international banking was not so widespread and before international co-operation in banking supervision had developed to any great extent. These laws may not be fully appropriate for present circumstances. It should be possible to remove such constraints to co-operation over time, provided the following conditions are fulfilled:

- that the information transmitted, or verified, is limited to what is needed for supervisory purposes. In that connection it may be noted that, in general, such information does not necessarily include data on banks' liabilities to individual customers, which tend to be most strictly protected by banking secrecy laws or regulations

- that the arrangements for transmittal or verification of information are reciprocal

- that the confidentiality of the information transmitted, or verified, is fully protected by law in the recipient country.

August 1981