

## The BVI Introduces Financing and Money Services Business Legislation



On 27 May 2009, the House of Assembly in the British Virgin Islands (BVI) passed the Financing and Money Services Act 2008 (the “**New Act**”). The New Act, when it comes into force shortly, will introduce a comprehensive regime dealing with licensing, regulation and supervision of “financing” and “money services” business carried on in or from within the BVI.

The New Act responds, and is designed to adhere, to Recommendation 23 of the Financial Action Task Force (FATF)’s 40 Recommendations on combating money laundering. FATF is an inter-governmental body tasked with the development and promotion of both national and international policies to combat money laundering as well as terrorist financing. Recommendation 23 provides that, in order to combat money laundering and terrorist financing, “Businesses” providing a service of money or value transfer, or of money or currency changing should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing.

It is important to note that the New Act only applies to non-bank financial institutions. Those financial institutions that engage in “banking business” as defined under the Banks and Trust Companies Act 1990, will continue to be licensed and regulated under that Act. Further, the New Act will not apply to post offices operated by the Government, unless this office

is operating as an agent or franchise holder of a non-bank financial business or money services business.

The New Act will introduce a prohibition on carrying on or holding oneself out as carrying on, in or from within the BVI, financing business or money services business, unless one is the holder of a license. This new licensing regime will be administered and supervised by the BVI Financial Services Commission.

The penalties for carrying on, or holding oneself out as carrying on, financing business or money service business without a licence will be US\$40,000 for corporations, and US\$40,000 or imprisonment for three years, or both, for individuals.

The New Act includes clear and comprehensive definitions of “financing business” and “money services” business, so that individuals and corporations can determine when they may require a licence.

Under the New Act, a person will carry on “financing business” (and hence will require a licence) if:

- (a) s/he carries on, in the BVI, the business of providing “credit” under “financing agreements” to borrowers resident in the BVI
- (b) in the course of any business carried on by the person in the BVI, s/he provides “credit” under a “financing agreement”, in an amount or to a value exceeding US\$50,000 to a borrower in the BVI;

- (c) s/he carries on, in the BVI, the business of leasing property to a person resident in the BVI under a financing lease
- (d) s/he carries on such other business or activity as may be specified in regulations as financing business.

Under the New Act, “credit” includes a cash loan, a deferred payment and any other form of financial accommodation. A “financing agreement” is an agreement whereby a person provides, or promises to provide, another person (“the borrower”) with credit, and a “financing lease” is defined as a lease whereby the property to be leased is acquired by the lessor from a third party (“the supplier”) for the purposes of leasing it to the lessee under the lease.

The New Act provides that a person carries on “money services business” if the person carries on the business of any one or more of the following services:

- (i) money transmission services;
- (ii) cheque cashing services;
- (iii) currency exchange services;
- (iv) the issuance, sale or redemption of money orders or traveller’s cheques; or
- (v) such other services as may be specified in regulations; or
- (vi) operating as an agent or franchise holder of a person carrying on one of the businesses specified above.

Importantly, the New Act provides that a BVI company that carries on, or holds itself out as carrying on, money services business outside the BVI is deemed to carry on, or hold itself out as carrying on, money services business from within the BVI.

In addition to the prohibition on conducting financing business or money services business without a licence. The New Act deals with the obligations, and restrictions on, licensees; corporate governance requirements of licensees; financial statements and audits of licensees, as well as including supervisory provisions.

In terms of the obligations, and restrictions on, licenses, the New Act will introduce provisions applying to licensees which deal with, among other

things, the maintenance of capital resources and deposits, appointment and termination of directors and senior officers, disposing of or acquiring a “significant interest” in a licensee (in which prior written approval of the Financial Services Commission needs to be obtained), and a requirement of licensees to establish a principal place of business in the BVI approved by the Commission.

The corporate governance provisions under the New Act provide that BVI licensees shall at all times have at least two directors, who must be individuals; licensees shall take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior officers and key functionaries, and licensees shall keep at their principal office in the BVI sufficient records to: (a) show and explain its transactions; and (b) at any time, to enable its financial position to be determined with reasonable accuracy.

The financial statements and audit provisions of the New Act provide that, among other things, licensees shall submit financial statements to the Financial Services Commission within six months of the end of the year to which they relate; that the licensee shall appoint an auditor for the purpose of auditing its financial statements, and also deals with the obligations of the auditor of a licensee.

The New Act also includes provisions establishing a number of offences and penalties, including offences of providing false or misleading statements, representations, reports or returns.

To provide stakeholders with an opportunity to adjust to the new regime, the New Act confirms that a person who, immediately before the commencement of the New Act was carrying on financial business or money service business, shall not be guilty of an offence during the six month period after the commencement of the New Act, or if the person applies for a licence during the first six months after the commencement of the New Act, until the time that the application for a licence is determined.

The New Act is another important measure to ensure that the BVI maintains its reputation as a leading

international financial centre which is committed to best practice commercial regulation. According to the BVI Government, the enactment of the New Act “will further strengthen the Virgin Islands’ continued regulation of relevant business entities in its financial services sector and demonstrate the Territory’s continued compliance with established international standards relating to efficient, prudential and effective regulations.”

Should you have any questions or requests for further information please contact:

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