

Legal Update

Financing and Money Services Act, 2009

The provisions of the Financing and Money Services Act, 2009 (“FMSA”) were passed by the BVI Financial Services Commission (the “Commission”) on 31 December 2009 and came into force on 1 April 2010.

Broadly speaking, FMSA prohibits BVI Business Companies and foreign companies from conducting (1) unauthorised financing business and (2) money services business unless the company has first obtained a licence from the Commission.

Financing Business

A BVI resident business or foreign company will carry on financing business if:

- they provide credit under financing agreements to borrowers resident in the BVI;
- they provide credit under a financing agreement, in an amount or to a value exceeding \$50,000 to a borrower in the BVI; or
- they lease property to a person resident in the BVI under a financing lease.

Businesses will not be caught by FMSA if they only provide financing business outside of the BVI.

Money Services

Under FMSA, money service includes the following services:

- money transmission services;
- cheque cashing services;
- currency exchange services; or

- the issuance, sale or redemption of money orders or traveller’s cheques.

FMSA provides that all BVI Business Companies operating money services outside the BVI will hold themselves out as providing money services from within the BVI.

Obtaining a licence and ongoing requirements

As previously noted, should a business fall within the scope of the regulations, they will require a licence from the BVI Commission.

The Commission will consider a number of factors, including its ‘fit and proper criteria’ to determine whether an applicant should be granted a licence.

Once a licence has been granted there are several ongoing reporting requirements that a licensee will have to consider, including an obligation to inform the Commission immediately should the licensee believe the business could be considered not ‘financially sound’.

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