

Legal Update

BVI Regulatory Code, 2009

The BVI Financial Services Commission (the "FSC") recently published the new Regulatory Code, 2009 (the "Code"). Following over a year of consultation, the Code is now law, having taken effect on **1 February 2010**. Certain transitional provisions are also to come into effect between 31 March 2010 and 30 June 2010. These transitional provisions are designed to provide existing licensees with extra time to comply with the additional requirements imposed by the Code.

The Code was enacted pursuant to the Financial Services Commission Act, 2001 (the "FSC Act") and applies to all persons holding a licence as set out in Schedule 1 of the Code (each a "licensee"). The Code contains detailed requirements in relation to the regulation and conduct of (1) licensees and (2) officers and agents of licensees who are conducting financial services business in the BVI.

The Code is wide ranging and many of the requirements apply to every licensee, regardless of the type of licence held, unless and to the extent that the Code provides otherwise (these 'universal' requirements are set out in Part II of the Code). Part I of the code also details a number of "fundamental principles of business" applicable to all financial services providers in the BVI.

The Code also imposes additional requirements on specific types or categories of licensee. These include:

- requirements applicable to banks in Part III;

- requirements applicable to insurers in Part IV;
- requirements applicable to trust companies and company managers in Part V; and
- requirements applicable to money service providers in Part VI.

The FSC has the power to take enforcement action against a licensee if the licensee has contravened, or is in contravention of, the Code.

Where the FSC is entitled to take enforcement action against a licensee, the FSC Act provides the FSC with a range of enforcement powers. These include issuing a directive, requiring a licensee to appoint a qualified person to advise it, undertaking an investigation into a licensee's business and imposing administrative penalties.

Any contravention of the Code will also be taken into account by the FSC in assessing whether a licensee is "fit and proper" to continue to hold a licence or whether its directors and senior managers are fit and proper to be concerned with the management of the licensee.

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