

British Virgin Islands: new regulatory legislation

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New legislative provisions will come into force shortly in the British Virgin Islands relating to financial services, insurance business and financing and money services. These provisions will provide for an enhanced platform in these areas of the financial services industry of the BVI, once again demonstrating the continual commitment of the BVI to ensuring its legislation provides for first class transparent regulation which is appropriate for the BVI as an OECD white listed jurisdiction.

Regulatory Code

The Regulatory Code 2009 (the "Code") comes into force on February 1, 2010. The Code was enacted pursuant to the Financial Services Commission Act, 2001 and applies to all persons holding a licence as set out in Schedule 1 of the Code (each a "licencee"). It contains detailed requirements in relation to the regulation and conduct of licencees (and officers and agents of licencees) who are conducting financial services business in the BVI.

Although some of the Code formalises existing procedures, there are also a number of new requirements for licencees. In order to give existing licencees additional time to comply with the new requirements, Schedule VI of the Code provides for a number of transitional provisions which come into effect by June 20, 2010.

The Code has the status of "law" in the BVI and must be complied with by every person to whom it applies. The Financial Services Commission has the power to take enforcement action against a licencee for contravention of the Code and any such contravention will be taken into account in assessing whether a licencee is "fit and proper" to continue to hold a licence. We will be publishing further briefings on the Code during February 2010.

Insurance Act

The new Insurance Act 2008, which replaces the Insurance Act 1994, and the Insurance Regulations 2009, which replace the 1995 regulations, will also come into force on February 1, 2010 in the BVI. The Insurance Regulations provide clarity on details relating to insurance business, maintenance of registers and what constitutes public information.

In addition, there are some new requirements under the Insurance Regulatory Code, 2009 which will impact BVI insurance companies and foreign insurance companies operating in or from within the BVI. Under the new regime, there are restrictions prohibiting multinational companies, non-governmental organisations or companies in the BVI from purchasing life insurance, health insurance, disability insurance or pension plans from an insurer resident outside the BVI.

Financing and Money Services Act

In the field of financing and money services, the Financing and Money Services Act, 2009 ("FMSA") will come into force on 31 March 2010. The FMSA is a further step by the BVI to ensure its statutory provisions meet or exceed international best practice for financial regulation, the FSMA in particular bringing the BVI into full compliance with Recommendation 23 of the Financial Action Task Force.

The FMSA introduces a regime for the licensing, regulation and supervision of financing and money services business carried out from or within the BVI, together with criminal offences for breach or non-compliance.

As the FMSA currently stands, the provisions relating to financing will only apply to companies providing credit or leasing moveable property within the BVI. Consequently BVI registered companies providing these services in other jurisdictions will not be affected. However, a BVI company providing money services (such as money transmission or currency exchange) anywhere in the world will need to be licensed and comply with the record-keeping and reporting requirements of the FMSA. The same applies to an overseas company providing money services within the BVI.

A six month transitional period is established by the FMSA from the date it comes into force to allow existing businesses to make the required application to the Financial Services Commission, but with fines of up to \$60,000 for non-compliance applying once this period ends. All business operating in the financing and money services sectors should be preparing for the new regime as soon as possible.

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