

Financing and Money Services Act 2009

The Financing and Money Services Act (**the "Act"**) was passed by the British Virgin Islands ("BVI") House of Assembly in May 2009 and is expected to come into force in the near future.

The Act is one of several recent statutory measures in the jurisdiction designed to ensure that the BVI legislative and regulatory regime is in line with, or exceeds, international best practice when it comes to combating money laundering and terrorist financing. Once in force it will introduce a regime for the licensing, regulation and supervision of financing and money services businesses carried out in or from within the BVI, together with criminal offences for breach or non-compliance.

Under the Act, a person shall not carry on, or hold himself out as carrying on, (i) financing business or (ii) money services business, in or from within the BVI, unless the person is a company (whether registered in the BVI or abroad) that has been duly licensed under the Act (although note that licensed banks and post offices are expressly excluded from the scope of the Act). For the purposes of the Act a BVI company that carries on money services business anywhere in the world is deemed to carry on money services business from within the BVI.

The focus of the Act is on business being carried on within the BVI such as, for example, lending to BVI residents. So, international clients not conducting their business with BVI residents, or actually in the BVI, but through BVI companies or other entities or transacting with others that have BVI companies or entities will be pleased to hear that the new regime will not affect their conduct of business.

A company carries on financing business if it carries on in the BVI:

- a) the business of providing credit under financing agreements to borrowers resident in the BVI (or in the course of any other business, it provides credit under a financing agreement in an amount exceeding \$50,000 to a borrower in the BVI);
- b) the business of leasing moveable property to a person resident in the BVI; or
- c) such business as may be later specified in any regulations under the Act.

Money services business is defined quite widely under the Act and includes any business if it is carried on (or

operated as an agent or franchise holder of a person carrying on) as a business providing any 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. other services as may be later specified in any regulations under the Act.

Under the Act it is a criminal offence to carry on, or hold oneself out as carrying on, financing business or money services business without a license under the Act. Penalties are a fine of \$60,000 for corporate bodies and a fine of \$40,000 or three years imprisonment, or both, for individuals.

For those companies that are licensed under the Act, there are requirements to maintain the company in a financially sound condition by being in a position to meet its liabilities at all times.

There are also restrictions (which may by regulations be disapplied or modified in respect of companies registered outside the BVI) on a licensed company to maintain its capital resources in the prescribed amount; to get the approval of the BVI Financial Services Commission ("FSC") for the appointment of a director or senior officer, or the disposal of a significant interest in a licensee; to establish and maintain an FSC-approved principal place of business in the BVI; and to maintain a certain level of insurance.

In terms of corporate governance, under the Act a licensed company must at all times have at least two directors (who must be individuals, not corporate bodies) and maintain clear and appropriate apportionment of significant responsibilities within the BVI amongst its directors, officers and functionaries.

There are also statutory requirements with regard to the accounting and financial records of relevant companies. A licensee must keep at its principal office in the BVI sufficient records to show and explain its transactions and enable its financial position to be determined with reasonable accuracy. These records must also enable

Financing and Money Services Act 2009

the company to meet its financial reporting and audit requirements under the Act. These are that the company shall (amongst other things) prepare financial statements for each financial year, and submit them to the FSC within six months of the financial year end, together with a report from a duly appointed auditor. The auditor is required amongst its obligations to report anything that suggests the commission of a criminal offence or a serious breach of the Act or other specified anti-money laundering legislation by the licensed company.

There are a number of offences under the Act in respect of failure by licensees to comply with the various regulatory, notification and reporting matters set out above, with fines of up to \$60,000 applicable for offenders.

Finally, it should be noted that once the Act comes into force, there will be a transitional period whereby those already engaged in financing or money services business will have six months in which to obtain a license, and will not be guilty of an offence if they continue their business while unlicensed during that period.

First Published in IFLR
Written by Paul Heath

About Ogier

Ogier is an award winning offshore legal and fiduciary services provider. We provide advice on all aspects of BVI, Cayman, Guernsey and Jersey law together with trust and administration services through a global network of offices covering all time zones and key financial markets.

Ogier continues to be recognised as a leading law firm by the principal legal directories, including Legal 500 and Chambers.

Financing and Money Services Act 2009

Contact details

NORTH & SOUTH AMERICA

British Virgin Islands

Simon Schilder
+1 284 852 7307
simon.schilder@ogier.com

Ray Weymouth
+1 284 852 7364
ray.weymouth@ogier.com

Fiduciary

Gareth Thomas
+1 284 852 7322
gareth.thomas@ogier.com

EUROPE, MIDDLE EAST & AFRICA

London

Simon Dinning
+44 20 7160 5070
simon.dinning@ogier.com

ASIA & AUSTRALIA

Hong Kong

Duncan Smith
+ 852 3656 6010
duncan.smith@ogier.com

Client briefing

www.ogier.com

This client briefing has been prepared for clients and professional associates of the firm. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Ogier includes separate partnerships which advise on BVI, Cayman, Guernsey and Jersey law. For a full list of partners please visit our website.

Please check with the relevant contact listed above for specific details regarding the legal services we offer from each office as we do not always practice the law of the jurisdiction where our offices are located. Please note that the named contact may not be qualified to advise on all the laws practiced from that office.

Excellence. Offshore

Bahrain • British Virgin Islands • Cayman Islands • Guernsey
Hong Kong • Ireland • Jersey • London • Tokyo

