

UPDATE

FinTech-related changes – BVI Financing and Money Services Act

The Financing and Money Services Act, 2009 has been amended to include a licensing regime applicable to the peer-to-peer (P2P) FinTech market, peer-to-business (P2B) and business-to-business (B2B) markets, assisting with the growth of the FinTech industry in the BVI. The recent changes are key for BVI companies carrying out financing and money services businesses anywhere in the world, including those dealing with virtual currencies and operating crypto exchanges.

Background

The Financing and Money Services Act, 2009 (FMSA) came into force in March 2010, providing a framework for the licensing, registration and supervision of persons carrying on financing and money services business in or from within the BVI.

The aim of the legislation is to regulate and license companies, other than banks and post offices, that provide financing and money services to persons resident in the BVI. Licensed banks and post offices are excluded from the scope of FMSA.

A BVI company providing money services anywhere in the world (eg currency exchange, money transmission or issuance of money orders) must be licensed under, and comply with the record-keeping and reporting requirements of, FMSA. Those requirements also apply to foreign companies (typically where their business has a physical establishment in the BVI) providing money services within the BVI.

What's new?

FMSA has been amended with effect from 1 March 2019¹. The changes include a new licensing regime for financing and lending in the P2P FinTech, P2B and B2B markets.

The current licensing regime does not specifically catch virtual and crypto currencies², though FinTech businesses should watch this space as we anticipate further regulations and guidance from the BVI Financial Services Commission (the **Commission**) in this rapidly developing sector.

Changes to scope of financing and money services business

Financing business

From 1 March 2019, the definition of "financing business" includes international financing and lending in the P2P FinTech market, including P2B and B2B markets (see [New licence classes – Class F below](#)).

Money services business

The definition of "money services business" now also includes:

- dispensing money;

¹ http://www.bvifsc.vg/sites/default/files/financing_and_money_services_amendment_act_2018.pdf

² Though the definition of "money services business" under FMSA includes transmission of money in any form, including electronic money.

- facilitating deposits;
- payments;
- transferring money;
- reporting account information via ATMs; and
- transmitting money in any form, including electronic money, mobile money or payments of money.

New licence classes – financing and lending in the P2P FinTech, P2B and B2B markets

Previously, the licenses available under FMSA were:

- a financing licence, allowing a holder to carry on financing business; and/or
- a money services licence, allowing a holder to carry on money services business.

From 1 March 2019, FMSA provides for six new classes of licence, as summarised below (key additions highlighted):

- Class A, allowing a licensee to carry on business of transmitting money in any form, including electronic and mobile payments of money;
- Class B, allowing a licensee to carry on the business of issuing, selling or redeeming money orders or traveller's cheques, cheque cashing and currency exchange;
- Class C, allowing a licensee to engage in financing business;
- Class D, allowing a licensee to carry on the business of financing lease;
- Class E, allowing a licensee to carry on the business of operating ATMs;
- Class F3, allowing a licensee to carry on the business of international financing and lending in the P2P FinTech market, including P2B and B2B markets; and
- Class G, allowing a licensee to carry on the business of such other service as may be specified in Regulations.

For the FinTech sector, key to note is that virtual currencies and crypto currencies are currently still viewed as being excluded from "money" and the scope of "money services business" and so would not need a licence under FMSA, although this may change.

Additional amendments to FMSA

Some of the additional changes made to FMSA with effect from 1 March 2019 are summarised below.

Maintenance of capital resources and deposit

If a licensee's capital resources fall below the level prescribed in the Regulatory Code 2009 (as amended)⁴, as well as notifying the Commission, the licensee must prepare and submit a plan showing how it intends to rebuild its capital resource to the requisite level. A licensee generally has up to 30 days to reconstitute its capital and, if it fails to do so, the Commission can take enforcement action, including revocation or cancellation of the relevant licence.

Duty of management to ensure licensee complies with law

Every director, senior officer and person concerned in the management of a licensee must take all reasonable steps to ensure it complies with FMSA and any legislation relating to money laundering, terrorist financing and proliferation financing. Failure to take all reasonable steps is an offence and can lead to a penalty of US\$30,000 for an individual.

³ A Class F licence may not be issued until Regulations providing additional measures for that Class have been adopted.

⁴ A BVI money services business had to have at all times capital resources at a level that is adequate to support its licensed business, taking into account the nature, size, complexity, structure and diversity of its business and its risk profile. The minimum capital resource requirement for a BVI money services business is \$10,000 cash in hand or on deposit; or \$5,000 cash in hand or deposit plus \$5,000 standby letter of credit or guarantee or interest in BVI property (or, if leased property, with at least 5 years remaining on the lease). BVI money services businesses are not required to make a regulatory deposit. The prescribed regulatory deposit for a foreign money services business is \$10,000.

Segregating customer accounts

Licensees which receive money from a customer for transmission or delivery to a payee customer must establish a separate customer account, which must be segregated from the licensee's own account.

No solicitation or receipt of money

No one may solicit or receive money from another person for the purpose of carrying on money services business or financing business in or from within the BVI unless licensed or exempt under FMSA. To do so is an offence and can lead to a penalty of US\$50,000 for an individual or US\$75,000 for corporate and other entities.

Consumer protection measures

The Commission may provide consumer measures for money services and financing businesses, including placing restrictions on interest rates charged, allowing or requiring instalment payments, limiting excessive charges and requiring loan statements and receipts to be provided to customers.

Contact us

Given the significant fines for failing to comply with FMSA, FinTech businesses need to understand whether they should be licensed and ensure that they comply with all applicable obligations, even where they operate outside the BVI.

Mourant Ozannes

We have a dedicated team of lawyers and governance professionals that can help clients identify and comply with their obligations under FMSA. Please contact your usual Mourant Ozannes contact or one of the team listed below for further information or advice.

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