

Key initiatives and developments from the Financial Services Commission for 2018

Remarks at the Meet the Regulator event on 11 April 2018 by Kenneth Baker, Deputy Managing Director, Financial Services Commission

Ladies and gentlemen

A warm welcome to our first MTR for 2018. I'm delighted to see so many of you here today. My colleagues at the Commission and I always appreciate having the privilege of exchanging views with you on matters of importance to the future of the BVI financial services industry.

I'd like to get our meeting going by setting out the legislative changes, key initiatives and developments which the Commission plans to deliver during 2018. I will also touch on the implementation of the National Risk Assessment.

[Legislative changes]

Let me begin with the half a dozen or so legislative changes ahead.

The first has in a sense already happened, in that in December 2017 the House of Assembly enacted legislation to introduce the Territory's newest corporate structure, **the Micro Business Company or MBC**.

The MBC will be launched by the middle of this year. At last, start-up entrepreneurs in numerous sectors, including technology will have a technologically advanced way of creating simple corporate structures in a transparent and timely way.

The MBC is designed to be attractive both to BVI residents and to global users of BVI financial services products. It will offer a differentiated, twenty-first century solution for business development and we expect it to be a significant enhancement of the Territory's range of financial services products.

To accommodate the technological advances in creating the new MBC structures, changes will be made to the existing AML regime specifically to recognise the electronic verification of customer due diligence information. I will say a bit more about this later.

Next, the House of Assembly has also seen the introduction and first reading of **the BVI Business Companies (Amendment) Act, 2017**.

This will offer certain companies new opportunities for managing risk and reducing liability by incorporating as segregated portfolio companies. Currently, the Act allows only this for licensed insurers under the Insurance Act, 2008 and funds under the Securities and Investment Business Act, 2010.

In future, sophisticated insurers, funds and BVI business companies will have the option of segregating their assets into different portfolios.

I should say that this will not be open to investment business companies, insurance managers, insurance intermediaries (that is, agents and brokers) or companies licensed to carry on banking, company management or financing and money services business.

Once the Bill is enacted, the Regulations, which have already been prepared, will become effective on the same date that the Bill becomes effective.

Another Act that has already had its first reading is **The Banks and Trust Companies (Amendment) Act, 2017**. This will modernise our legislation by taking account of new developments and providing new licence classes of trust and corporate service providers.

In future, an authorised agent's functions will include accepting the service of documents on behalf of a licensee, whether arising from a legal process or otherwise.

We believe it essential that registered agents have the right resources and compliance records in place before taking on additional responsibilities. The Act will thus expand on the nature and scope of registered agent's services and empower the Financial Services Commission if necessary to restrict a registered agent or a class of agents from performing the registered agent's function for a BVI business company or a company incorporated under an enactment,

foreign company or limited partnership. This will also be addressed in the Company Management (Amendment) Act, 2017.

And two additional classes of licence will be created, namely a Class IV trust licence and a Class V licence.

A Class IV trust licence will relate to carrying on trust business and operating family business and will be restricted to administering no more than 300 companies and 50 trusts. The nature and scope of family business and other closely held group business will be outlined in the Regulatory Code.

A Class V licence, on the other hand, will relate only to the operation of family business. It will be restricted to administering no more than 300 companies.

Finally, the Banks and Trust Companies (Amendment) Act will repeal the provisions which allow subsidiaries to be included on a schedule to the licence. In essence, any subsidiary which has been approved to be listed on the schedule of a licence and currently acting as a registered agent and conducting trust or company management business will either need to merge into the licensee or apply for a separate licence to continue to conduct trust or company management business by the 31 December 2018 deadline.

The next piece of legislation I want to mention relates to compliance. **The Financial Services Commission (Amendment) (No. 2) Act, 2017** will reform the Financial Services Commission Act, 2001 so as to create a new legal framework that enables the Commission to approve corporate bodies to perform compliance functions once certain conditions are met.

To get approval, the corporate body will have to be incorporated under the BVI Business Companies Act and be in good standing. It must be operating physically in the Virgin Islands, as must its employees, and it must carry out its business here. Its primary responsibility will be that of providing compliance function services to entities within the Virgin Islands. To ensure it understands the nature and complexity of any licensee it wishes to serve, it must have staff who are qualified and competent to be appointed as compliance officers. Finally, granting such approval must not be against the public interest.

In essence, the people employed by the corporate body will require formal Commission approval to be appointed as compliance officers by licensees. That is, both the corporate body and individual compliance officers must be approved by the Commission. Also, even if they engage a separate company to perform compliance, licensees will have to identify a senior officer who must be responsible for overseeing compliance. This person will be held personally accountable for any compliance failures.

Turning now to financing and money services business, **the Financing and Money Services (Amendment) Act, 2018** will reform the current regime.

It will modify the definition of “financing business” to include the provision of pay day advances and consumer finance loans, and it will remove the restriction on the amount or value of the credit and pay day advances that may be given.

As regards consumer finance loans, in future these will be confined to between \$5,000 and \$25,000. The aim is to provide credit without affecting traditional providers or undercutting existing lenders.

The definition of “financing business” will expand to create seven different classes of licensees. These will be:

- Money transmission, including electronic and mobile payments
- Issuing, selling or redeeming money orders or traveller’s cheques
- Financing business
- Financing lease
- Operating ATMs
- International financing and lending in the peer-to-peer FinTech market, including peer-to-business and business-to-business markets
- And, finally, any other specified services.

These reforms recognise peer-to-peer FinTech business as a new area of international lending for BVI business companies. Of course, in order to maintain the good reputation of the

Territory's financial services industry, we will first need to develop additional measures for regulating and supervising this type of business and guarding against any potential abuse.

The Bill will also expand the definition of "money services business" to include the transmission of monetary value, including electronic money, mobile money and payments and other alternative methods. These are growing areas of money services business which the Territory needs to embrace – and you will hear more about them in the final presentation today on the regulatory sandbox initiative.

Let me turn now to **money laundering**. The NRA Report identified the need to **amend our AML regime** to ensure that the BVI is fully compliant with the revised FATF 40 Recommendations. Consequently, a comprehensive benchmarking exercise was conducted and the AML regime will be substantially revised later this year. In the meantime, we have recently amended the AML Code to address the various forms of identification which are acceptable in taking on new customers or updating customer due diligence information.

As I mentioned, the new Micro Business Company will make it even more important to find new ways of accepting and storing customer due diligence information. You will want to make use of the innovative electronic tools that exist to verify that people exist and are indeed your customers. Although the existing AML regime does not prevent the use of this new technology, to put the issue beyond doubt, electronic verification will be specifically addressed as part of the customer due diligence process.

Finally as regards legislation, the Commission intends to formalise the inclusion of **conduct regulation** in its expanded remit. Conduct regulation includes producing principles and guidelines that govern how financial services providers in specific sectors should operate. We will initially target the insurance and banking sector, with other sectors to follow.

It is the Commission's job to ensure adequate consumer education and protection, as well as transparent and fair market conduct by all financial services licensees. Treating customers fairly must become a standard and expected business practice in our financial services industry.

So ladies and gentleman, there will be plenty of new legislation to improve and strengthen what the Virgin Islands has to offer. The Commission looks forward to discussing this with you as it develops.

[Compliance/enforcement]

Legislation must, of course, be followed. And that brings me to the matters of **compliance and enforcement**, which are an important part of every MTR. The message this year as mandated by the Commission's Board is simple: **full compliance from 2018**.

In this era of risk-based supervision, what does full compliance mean? It doesn't mean that you have to be 100 per cent compliant with every single legislative requirement. What it means is that you as a licensee don't pose a significant risk to the Commission's statutory objectives, which include amongst others: to supervise and regulate licensees in accordance with financial services legislation; to monitor the effectiveness of the financial services legislation; to promote a safe and sound financial services environment; and ensuring financial stability and the continuity of systemically important financial services.

It means that you are not in a so-called elevated risk bucket, something which will be discussed later today under the Overview of the Risk Assessment Framework. If you aren't risky, you won't be exposed to intrusive enforcement action.

On the flip side, when a licensee does pose an elevated risk to the Commission's statutory objectives, full compliance also means quicker and stricter enforcement.

Ladies and gentlemen, I hope you will nonetheless still find the Commission an accessible and approachable regulator. We will always remain open to suggestions and ideas for product development and improvement to the regulatory regime. As you know, most of our Territory's new product developments originate in the private sector. The MBC Act and FinTech initiatives are good recent examples.

The Commission's task is to ensure that a full regulatory regime is put in place to protect clients and to ensure that the Virgin Islands maintains its position as a well-regulated jurisdiction from which to conduct financial services business. The push for full compliance is to protect us all.

[Update on NRA implementation]

The final matter I'd like to address is **implementation of the NRA Report**. The Commission is looking forward to publication by the government both of the report and of an action plan to ensure full implementation of all the recommendations.

An NRA Report by its very nature exposes the weaknesses in a jurisdiction's AML regime. Without exception, every jurisdiction that has undertaken an NRA has found deficiencies. The important thing is to develop a credible action plan to address those deficiencies, implement the recommendations and track progress.

You and I are aware that many of the recommendations have already been addressed since the Report was produced. But publication of the Report along with publicity for the actions taken are needed to demonstrate clearly and openly that the BVI has an effective AML regime in place. The BVI has a good story to tell, but too few people outside of those who were involved in the NRA process still know it.

Ladies and gentlemen, I hope this review of what lies ahead has been helpful.

The Commission looks forward to the enactment of the legislative changes I've discussed. And we look forward as ever to licensees demonstrating that they are fully compliant and operating at an acceptable level of risk.

We welcome your engagement in supporting our regulatory regime and bringing more FinTech products to market – and even in ensuring the publication of the NRA Report. Let us all make sure that the world knows the good story the BVI has to tell.

Thank you.
