Kenneth Baker: Financial and Money Services Bill, 2007

Remarks by Mr. Kenneth Baker, Deputy Managing Director - Regulation, of the British Virgin Islands Financial Services Commission, at the Meet the Regulator, Long Bay Beach Hotel, Tortola, British Virgin Islands, 17th July, 2007.

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The Financial and Money Services Bill – Consultation Draft, has been posted on the Financial Services Commission ("Commission") website http://www.bvifsc.vg/Publications/ConsultativeDocuments/ since 29th March 2007. This Bill proposes to introduce a regime for the licensing and supervision of financing business and money services business carried on only in the Virgin Islands, which, differs from other financial services legislation which seek to regulate businesses carried on in and from within the Virgin Islands. The proposed Bill is intended to ensure that the BVI is compliant with the Financial Action Task Force ("FATF") recommendations. Specifically, FATF Recommendation 23 states *inter alia:* "Other financial institutions should be licensed or registered and appropriately regulated, and subject to supervision or oversight for anti-money laundering purposes, having regard to the risk of money laundering or terrorist financing in that sector. At a minimum, businesses providing a service of money or value transfer, or of money or currency changing should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing."

It has come to our attention, that a number of entities are deliberately seeking to engage in financial intermediation in an unregulated manner. The Trade and Investment Promotions Department, continues with increasing frequency, to be approached about licensing various schemes where people and companies are trying to engage in providing credit facilities, or other forms of financing in ways that presently fall outside of the regulatory remit of the Commission.

One of the Commission's functions is to police the perimeter of regulated activities to ensure that the interest of consumers and the public are not adversely impacted. This function is intended to promote a safe and sound financial services environment in the Territory. Unfortunately, these financing schemes can slip through the gaps in the current regulatory framework.

In order to ensure that anyone engaging in any form of financial intermediation does not expose the Territory to potential deleterious risk including money laundering and terrorist financing activities, the Commission proposes widening the scope of the regulatory regime to include financing businesses.

"Financing business" is defined in clause 5 of the Bill. In summary, a person carries on financing business if:

(a) he carries on, in the Virgin Islands, the business of providing credit under financing agreements to borrowers resident in the Virgin Islands;

(b) in the course of any business carried on by him in the Virgin Islands, he provides credit under a financing agreement, in an amount or to a value exceeding US$50,000 to a borrower in the Virgin Islands;

(c) he carries on, in the Virgin Islands, the business of leasing property to persons resident in the Virgin Islands under financing leases; or

(d) he carries on such other business or activity as may be specified in the regulations as financing business.

Clause 4 of the Bill provides definitions for "financing agreement", "lease" and "financing lease" as:

(a) a “financing agreement” is an agreement whereby a person provides, or promises to provide, a person (the borrower) with credit;

(b) a “lease” is an agreement whereby a person (the lessor) grants another person (the lessee) the right to possession and use of any moveable property for an agreed period in return for periodic payments; and

(c) a “financing lease” is a lease whereby the property to be leased is acquired by the lessor from a third party (the supplier) for the purpose of leasing it to the lessee under the lease.

“Money services business” is defined in clause 6 as the business of:

(a) 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 cheque; or

(v) such other services as may be specified in the regulations; or

(b) operating as an agent or franchise holder of a person carrying on a business specified in paragraph (a).

As provided by clause 3, the Bill would not apply to a person licensed under the Banks and Trust Companies Act, 1990 (No. 9 of 1990) and post office operated by the Government. A post office, when carrying on money services business, is deemed to be a "licensee" for the purpose of this Bill and the Financial Services Commission Act.

Under the proposed regime financing businesses and money services businesses would be licensed and regulated by the Commission. By virtue of clause 47, the proposed Act would be included in the list of financial services legislation in schedule 2 to the Financial Services Commission Act, 2001 (No. 12 of 2001). Thus, the Commission would, in addition to its powers under the proposed Act, be able to administer and enforce the proposed Act, and regulate financing businesses and money services businesses, in accordance with the Financial Services Commission Act, 2001.

Under clause 7, it would be a criminal offence to carry on financing business or money services business without a licence. Further, clause 12 would require that such a business ensure that it maintains adequate capital resources. The capital resources would have to be maintained while the business continues to be licensed. A business would also need to make a regulatory deposit with the Commission in a prescribed amount before it is licensed.

All licensed financing businesses and money services businesses would be strictly monitored in other ways. Under clause 21, they would be required to prepare financial statements and to ensure appropriate management systems and internal controls under clause 18. Licensees would also be required to file periodic returns with the Commission. In keeping with the requirements of other regulatory legislation, clause 22 would require every licensee to furnish written confirmation that the information set out in its application for a licence remains correct and give a full and fair account of its business. The Commission would also be empowered to specify other kinds of returns.

Under clause 26, the accounts of all licensees would be audited by an auditor, who would be a qualified accountant approved by the Commission. The audited financial statements

would be forwarded to the Commission within six months after the end of the financial year. By clause 28, the Commission would be empowered to summon an auditor to appear before it for purposes of making inquires into a business. The licensee would be notified of any such meeting and would be entitled to attend.

Clause 17 would prescribe that each licensee has at least two directors. Each director and senior officer of a business would have to be approved by the Commission.

Clause 31 would empower the Commission to require licensees to effect such insurance policies as the Commission may determine. While, certain enforcement, transitional and miscellaneous provisions are contained in clause 43 to 46.

I am sure that you will agree that engaging in any form of financial intermediation in an unregulated fashion, exposes the Territory to potential deleterious risks including money laundering activities. The current trade licensing regime is inappropriate and unsuitable for these types of activities. We, therefore, need at all times to ensure that these activities which do not fall under the Banks and Trust Companies Act, 1990 (No 9 of 1990) or Company Management Act, 1990 (No 8 of 1990) are managed, controlled and owned by 'fit and proper" persons and the activities are conducted in the public interest in accordance with best practice and acceptable business standards. Failure to address these activities would leave our economy vulnerable to the advent of loan sharking, usury financing fees and charges and sanctioned money laundering activities.

Finally, I hope this presentation gave you a brief overview of the proposed Bill, the salient provisions of the Bill and the reasons why the Commission found it necessary to champion this Bill. We look forward to the enactment and implementation of this Bill in the coming months.

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