



Chambers Global Practice Guides

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Fintech 2022

British Virgin Islands: Law & Practice
Lucy Frew, Sara Hall, Andrew Howarth
and Colm Dawson
Walkers

practiceguides.chambers.com

BRITISH VIRGIN ISLANDS CONTENTS

10. Insurtech	p.12	12.3 Classification of Blockchain Assets	p.13
10.1 Underwriting Processes	p.12	12.4 Regulation of "Issuers" of Blockchain Assets	p.13
10.2 Treatment of Different Types of Insurance	p.12	12.5 Regulation of Blockchain Asset Trading Platforms	p.13
11. Regtech	p.13	12.6 Regulation of Funds	p.13
11.1 Regulation of Regtech Providers	p.13	12.7 Virtual Currencies	p.13
11.2 Contractual Terms to Assure Performance and Accuracy	p.13	12.8 Impact of Regulation on "DeFi" Platforms	p.13
12. Blockchain	p.13	12.9 Non-fungible Tokens (NFTs)	p.13
12.1 Use of Blockchain in the Financial Services Industry	p.13	13. Open Banking	p.14
12.2 Local Regulators' Approach to Blockchain	p.13	13.1 Regulation of Open Banking	p.14
		13.2 Concerns Raised by Open Banking	p.14

1. FINTECH MARKET

1.1 Evolution of the Fintech Market

The government of the British Virgin Islands (BVI) and the BVI Financial Services Commission (FSC) – the principal financial services regulator – have progressed important initiatives in recent years that demonstrate the BVI’s unequivocal commitment to digital transformation and fintech innovation.

Legislation Recognising Electronic Means

The BVI has passed recent legislation to support a digital environment in the BVI and provide the means for the operation of e-government services. This includes the Electronic Transactions Act, 2021, the Electronic Transfer of Funds Act, 2021, and the Electronic Filing Act, 2021. These Acts are designed to enhance the BVI legal system to legally recognise the filing, creation or retention of official documents with or by a government body by electronic means. They also legally recognise the provision, deliverance, retention, or access to information or documents by electronic means, where the law requires access be given to information or documents, or for the same to be retained, delivered or presented in original form.

Previously, the Electronic Transactions Act, 2001 had already recognised electronic signatures legally. Furthermore, in 2018, the BVI permitted the use of “appropriate digital and electronic means” to carry out identification and verification for purposes of compliance with anti-money laundering and combating the financing of terrorism rules and regulations.

Expansion of Money Services Business

A 2019 amendment to the Financing and Money Services Act, 2009, expanded the definition of “money services business” beyond money transmission to include “electronic money”, “mobile money”, “payments of money” and oth-

er alternative methods of money and payment transmission. That amendment also introduced a new licence class (Class F), which permits the holder to carry on the business of international financing and lending in the peer-to-peer (P2P) fintech market, including peer-to-business (P2B) and business-to-business (B2B) markets.

Data Protection Obligations

The BVI recently enacted the Data Protection Act, 2021, which imposes data protection obligations on “data users” who process, or have control over the processing of, personal data. In essence, the data user may not process personal data unless it satisfies one of the conditions specified in the Act, and it must protect the personal data when processing it. The data subject has certain access and other rights. Sensitive personal data is subject to stricter rules.

BVI Regulatory Sandbox

Importantly, the FSC introduced a “regulatory sandbox” in 2020 that has been open to applications since the beginning of October 2020. The objectives of the BVI’s regulatory sandbox are to align regulation and innovation by providing a defined test environment and a tailored and focused supervisory framework, while protecting market participants. The goal is to permit the generation of new innovative fintech-related business models in the BVI.

The BVI has not, to date, adopted the Financial Action Task Force (FATF) recommendations on virtual asset services providers. However, it is expected that such recommendations will be adopted in the very near future.

2. FINTECH BUSINESS MODELS AND REGULATION IN GENERAL

2.1 Predominant Business Models

The fintech-related business models in the BVI are divided into four categories:

- funds that invest in digital assets or blockchain-based businesses;
- token issuers who may either seek to offer and promote crypto-coins (classic, stable, or altcoins) or raise capital to fund the development of a blockchain-based business;
- digital asset exchange providers, either in a centralised or decentralised (DEX) offering; and
- NFT platforms.

The business models are driven by new entrants rather than legacy players.

2.2 Regulatory Regime

The competent financial services regulator is the FSC. Entities and individuals conducting regulated financial services activities in or from within the BVI are required to obtain a licence or be registered with the FSC to conduct the regulated activities.

Principal Financial Services Legislation

The principal financial services legislation comprises the following: the Securities and Investment Business Act, (2020 Revision) (SIBA); the Banks and Trust Companies Act (2020 Revision) (BTCA); and the Financing and Money Services Act (2020 Revision) (FMSA), each as amended. The BVI has not, to date, implemented anti-money laundering and combating the financing of terrorism (AML/CFT) legislation that adopts the FATF recommendations on virtual asset services providers (however, this is expected to occur during the course of 2022). The supervisory

powers of the FSC are based on the Financial Services Commission Act (2020 Revision).

Virtual Asset Guidance

To be in the scope of SIBA, the fintech business would need to constitute an “investment business”, which in turn would hinge on whether the subject matter of the fintech services offered includes “investments”. In the Guidance on Regulation of Virtual Assets in the Virgin Islands issued in July 2020 (“Virtual Asset Guidance”), the FSC observed in relation to SIBA’s parameter that “virtual assets and virtual assets-related products used as a means of payment for goods and services (for example, tokens) which provide the purchaser with an ability to only purchase goods and services (utility tokens) would not be captured by financial services legislation”. However, the FSC also noted that “where a virtual asset product or service provides a benefit or right beyond a medium of exchange, it may be captured under [SIBA]”. The reason is that, depending on the manner in which a token is used and the rights attaching to it, the token could be characterised as equity or debt and could, therefore, be an “investment” within the meaning of SIBA. Similarly, the FSC confirmed in its Virtual Asset Guidance that certain derivatives, in particular futures and contracts for the differences that reference virtual assets, would be investments within the meaning of SIBA.

To be in the scope of the FMSA, the financing, money transmission, currency exchange, electronic money, or other money service in question would need to concern legal tender, that is, fiat money. The FSC confirmed in its Virtual Asset Guidance that “the transmission of virtual assets or virtual asset related products would not require a money services business licence”. However, the FSC also cautions that the views and guidance of the FSC should first be secured before proceeding with the virtual money services activity in or from within the BVI.

Further Rules and Regulations

There are a number of further rules and regulations that may apply to firms that conduct fintech business, if such business is in the scope of SIBA, the BTCA, or the FMSA and requires a licence or approval. These rules include AML/CFT requirements, sanctions rules, beneficial ownership disclosure requirements, reporting requirements in the context of the international exchange of tax information, and economic substance requirements.

2.3 Compensation Models

There are no restrictions in the BVI on compensation models that industry participants are allowed to use to charge customers.

2.4 Variations between the Regulation of Fintech and Legacy Players

The FSC does not differentiate between new fintech participants and legacy participants, but note the comments in **2.5 Regulatory Sandbox** and in **2.12 Conjunction of Unregulated and Regulated Products and Services**, relating to incumbent players who wish to extend their business model to a new activity, whether regulated or not.

2.5 Regulatory Sandbox Objectives and Goal

The FSC introduced a regulatory sandbox in 2020 and this has been open to applications since the beginning of October 2020. The objectives of the BVI's regulatory sandbox are to align regulation and innovation by providing a defined test environment and to offer a tailored and focused supervisory framework, while protecting market participants. The goal is to permit the development of new business models within the BVI.

Participants

The sandbox is open to institutional applicants (companies and limited partnerships) that intend

to offer an “innovative fintech” business model, defined as the “development or implementation of a new system, mechanism, idea, method or other arrangement through the use of technology to create, enhance or promote a product or service with respect to the conduct or provision of a financial services business”.

Benefits and Requirements

Sandbox participants will have the benefit of exemptions from specific provisions of the regulatory legislation and rules that might otherwise be applicable. AML/CFT rules and regulations will apply. A sandbox applicant must submit a business proposal that sets out an innovative product or service that is a regulated activity or has a nexus to financial services, and which includes details of test scenarios, projected outcomes, and an exit strategy that permits either the winding-down of operations or the transition of the sandbox participant to authorised licensee. Applicants must be fit and proper and to that end, must demonstrate competence, integrity and financial soundness.

Successful applicants will be subject to the following governance requirements:

- a duty to pay a fee;
- a duty to submit regular interim progress reports; and
- duties to maintain adequate and transparent records, risk management policies and controls, and to conduct an independent review of IT systems.

Any material interim changes to the business plan will need prior FSC approval. In addition, successful applicants will be subject to a restriction on the number of clients and a requirement to disclose certain potential risks to each client. The mandatory disclosures concern the fact that the sandbox participant does not hold a licence issued by the FSC for the particular (sandboxed)

activity, that the business model is being tested within the regulatory sandbox, and that the duration of the sandbox participation is limited to 18 months, with a potential extension of up to six months.

2.6 Jurisdiction of Regulators

As the principal regulator of the financial services industry in the BVI, the FSC's functions include responsibility for the regulation, supervision and monitoring of financial services licensees, the enforcement of financial services laws, the monitoring of licensees' compliance with AML/CFT legislation, the issuance of guidance to licensees, and the issuance of advisories to licensees and the public. As a financial services regulator, it also performs a co-operative function in facilitating requests for regulator-to-regulator assistance.

In carrying out its functions, the FSC must have regard to:

- the protection of the public against financial loss arising out of dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services in or from the BVI;
- the protection and enhancement of the reputation of the BVI as a financial services jurisdiction; and
- the reduction of crime and other unlawful activities related to financial services business.

The International Tax Authority (ITA) is the BVI's competent authority for the purposes of international assistance in tax matters and compliance with the BVI's rules and regulations on disclosure of beneficial ownership and maintenance of economic substance.

The ITA is responsible for:

- negotiating and administering requests under tax information exchange agreements and similar agreements in relation to tax matters;
- continuing to develop the BVI tax information exchange mechanisms in accordance with international standards; and
- supervision of legal entities and registered agents that are subject to the BVI's beneficial ownership disclosure regime and the economic substance regime.

The BVI Financial Investigation Agency (FIA) was established under the Financial Investigation Agency Act (2020 Revision). The FIA is responsible for receiving, obtaining, investigating, analysing and disseminating information which relates to a financial offence (money-laundering and/or drug-money laundering), the proceeds of crime, or a request for legal assistance.

2.7 Outsourcing of Regulated Functions

The FSC provides guidance to licensees on the establishment of outsourcing arrangements and the outsourcing of material functions or activities, which can be found in the Regulatory Code that applies to licensees. A licensee's board remains ultimately responsible for all outsourced decisions and activities. The Regulatory Code also requires the licensee to establish and maintain appropriate and adequate systems and controls to manage its outsourcing risk. Before entering into an outsourcing agreement, the licensee must undertake due diligence on the potential risks, as well as on the proposed service provider and its capacity and ability to undertake the outsourced activities.

Under the provisions of the Regulatory Code, a licensee is not permitted to outsource:

- a compliance function;
- a core management function; or

- any activity which would impair the FSC’s ability to supervise the licensee or that would affect the rights of a customer against the licensee (including the right to obtain legal redress).

The Regulatory Code requires the licensee to have a comprehensive outsourcing policy in place, which is to be approved by its board and regularly reviewed. In addition, any outsourced activity must be the subject of a written contract that clearly sets out the scope of the activities to be outsourced, the rights and responsibilities of the respective parties, and the protection by the outsourced person of confidential information relating to the licensee’s clients. The written agreement must also give the licensee and its auditor access at all times to any relevant documents and information. The licensee is also required to establish and maintain a contingency plan for each outsourcing agreement that it enters into.

Outsourcing of AML/CFT functions is subject to separate requirements that are set out in the BVI’s Anti-Money Laundering Regulations and the AML/CFT Code of Practice.

2.8 Gatekeeper Liability

If the platform activities constitute regulated business under SIBA, the FMSA, or the BTCA, as the case may be, the fintech provider as licensee would be responsible for ensuring that the platform business complies with the relevant legislation, including requirements concerning the combating of money-laundering and terrorist-financing.

2.9 Significant Enforcement Actions

As the FSC does not consider activities relating to utility tokens to be regulated activities, it has not taken any enforcement action against any participants in the crypto-sector.

2.10 Implications of Additional, Non-financial Services Regulations Data Protection Legislation

As noted in **1.1 Evolution of the Fintech Market**, the BVI has recently introduced data protection legislation. It imposes data protection obligations in the BVI on “data users” who process, or have control over the processing of, personal data. In essence, the data user may not process personal data unless it satisfies one of the conditions specified in the data protection legislation, and it must protect the personal data when processing it. The data subject has certain access and other rights. Sensitive personal data is subject to stricter rules. “Personal data” is defined as all data processed or recorded in respect of transactions of a commercial nature that relates directly or indirectly to an identifiable data subject. The class of data subjects protected under the data protection legislation includes individuals as well as legal persons.

The BVI government’s other recent legislative enactments, as described in **1.1 Evolution of the Fintech Market**, permit digital processing of personal data and compliance with consent requirements and data access requests.

Additional Rules and Regulations

There are a number of additional rules and regulations that may apply to firms that engage in fintech businesses, including sanctions rules, beneficial ownership disclosure requirements, reporting requirements in the context of international exchange of tax information, and economic substance requirements. In particular, fintech providers should be aware that the owning of intellectual property rights by a legal entity in the BVI would require that entity to comply with economic substance requirements in the BVI if the entity earns identifiable income from the intellectual property.

2.11 Review of Industry Participants by Parties Other than Regulators

Other industry participants, such as accountants and auditors, are not regulated or supervised in the BVI.

2.12 Conjunction of Unregulated and Regulated Products and Services

In general, activities relating to utility tokens are not considered to be regulated activities. Incumbent licensees under SIBA, the FMSA, or the BTCA may lawfully offer unregulated products and services in addition to their regulated products and services. However, an extension of the business offering would need to be disclosed to the FSC by way of an amended business plan, which is likely to be questioned by the FSC. Therefore, in practice, a regulated firm may elect to establish a separate entity in the group to offer the new, unregulated product or service.

2.13 Impact of AML Rules

The BVI's AML/CFT Code of Practice is expressed to apply to an entity engaged in "relevant business" within the meaning of the Anti-Money Laundering Regulations. This definition of "relevant business" has not yet been updated in light of the FATF's recommendations on virtual asset services providers. However, as stated in **1.1 Evolution of the Fintech Market**, it is expected that the FATF's recommendations will be adopted in the BVI in the very near future. As part of introducing implementing legislation, the definition of "relevant financial business" will be amended to apply to virtual asset services providers (and will likely impact fintech companies that are both regulated and unregulated).

3. ROBO-ADVISERS

3.1 Requirement for Different Business Models

BVI financial services legislation does not specifically contemplate robo-advisers. However, should a BVI legal entity hold and operate the algorithm or software that provides a robo-adviser's function, depending on the structure and nature of the business, it may be required to be licensed under SIBA.

3.2 Legacy Players' Implementation of Solutions Introduced by Robo-Advisers

No BVI service providers appear to be introducing robo-advisers at this stage.

3.3 Issues Relating to Best Execution of Customer Trades

If a fintech business falls in the scope of SIBA so that the provider is required to be licensed by the FSC, where the provider deals with or for a customer, the provider would need to comply with best execution obligations under the Regulatory Code, and use reasonable efforts to obtain the best available price.

4. ONLINE LENDERS

4.1 Differences in the Business or Regulation of Loans Provided to Different Entities

If a BVI entity provides loans to borrowers in or outside the BVI and that entity also accepts deposits, the entity would be required to be licensed under the BTCA. If the entity only provides loans and if the borrowers are based in the BVI, that firm would be required to be licensed under the FMSA.

Furthermore, irrespective of regulatory status, if a legal entity engages in the financing and leasing business, that legal entity will need to

comply with economic substance requirements in the BVI unless it can successfully claim that its income is taxed in another jurisdiction.

4.2 Underwriting Processes

Underwriting business is not a regulated activity in the BVI. Underwriting activity typically takes place onshore and the FSC will require a lender engaging in it to be in compliance with the laws of the jurisdiction in which the underwriting is taking place.

4.3 Sources of Funds for Loans

Retail lending to BVI residents is primarily conducted by branches of a few major banks that are licensed under the BTCA and that do not hold a restricted banking licence.

A 2018 amendment to the FMSA that came into force in March 2019 introduced a new licence class (Class F), which permits the holder to carry on the business of international financing and lending in the peer-to-peer (P2P) fintech market, including peer-to-business (P2B) and business-to-business (B2B) markets. However, the Class F licence is not yet open to applications (pending the enactment of detailed regulations).

4.4 Syndication of Loans

The syndication of loans is typically arranged onshore rather than in the BVI. Accordingly, to the extent that the BVI lending vehicle is involved in a syndication, it must be in compliance with the laws of such onshore jurisdiction.

5. PAYMENT PROCESSORS

5.1 Payment Processors' Use of Payment Rails

Payment processors must use existing payment rails at this stage.

5.2 Regulation of Cross-Border Payments and Remittances

Money services are regulated activities under the FMSA. Money transmission includes electronic money, mobile money, payments of money and other alternative methods of money and payment transmission. The FMSA does not distinguish between domestic and cross-border payments.

6. FUND ADMINISTRATORS

6.1 Regulation of Fund Administrators

BVI-based administrators must hold a licence in accordance with SIBA. A mutual fund administrator licensed under SIBA is required to satisfy itself as to various criteria regarding the business and operation of a mutual fund and its service providers before it provides fund administration to such mutual fund.

6.2 Contractual Terms

A number of provisions are being incorporated into fund administration documents. Many of these provisions stem from regulatory obligations. Essentially, fund administration agreements include provisions that the administrator must provide the information and documentation required to be obtained under AML/CFT legislation to either the regulated fund itself or the FSC. The BVI's AML/CFT legislation also requires the fund administrator to maintain records of AML documentation for at least five years after conclusion of the transaction. These agreements also require the administrator to report any suspicions it may have relating to money-laundering potentially occurring through the fund, to the fund's money-laundering reporting officer.

In addition to the AML/CFT requirements, the fund administration agreement will often have provisions requiring the administrator to safe-

guard and treat personal data in accordance with certain prescribed standards.

7. MARKETPLACES, EXCHANGES AND TRADING PLATFORMS

7.1 Permissible Trading Platforms

SIBA requires any person who provides a facility for the trading or listing of “investments” to be licensed under SIBA.

As noted in **2.2 Regulatory Regime**, to be in the scope of SIBA, the fintech business would need to constitute “investment business”, which in turn would hinge on whether the subject matter of the fintech services offered is “investment”. The FSC observes in its Virtual Asset Guidance that utility tokens would not typically be captured by SIBA. However, certain forms of stable coins or altcoins might be, depending on their structure. Similarly, the Virtual Asset Guidance confirms that certain derivatives, in particular futures and contracts for the differences that reference virtual assets, would be investments within the meaning of SIBA.

7.2 Regulation of Different Asset Classes

As noted in **2.2 Regulatory Regime**, depending on how the platform is structured, SIBA, the FMSA or the BTCA could potentially operate on fintech trading platforms to the effect that the fintech business would be required to obtain a licence from the FSC. Asset classes are not regulated per se.

7.3 Impact of the Emergence of Cryptocurrency Exchanges

The FSC has not at present licensed any exchange, including digital asset exchanges, in the BVI.

7.4 Listing Standards

See **7.3 Impact of the Emergence of Cryptocurrency Exchanges**.

7.5 Order Handling Rules

Licensees under SIBA must comply with certain dealing and managing rules, including order handling rules, in accordance with the Regulatory Code.

7.6 Rise of Peer-to-Peer Trading Platforms

With the 2018 amendment to the FMSA, a new category of financing licence class (Class F) was provided to cover P2P and B2B lending when done through a BVI company, see **1.1 Evolution of the Fintech Market**. However, the Class F licence is not currently open to applications and no further detailed regulations have yet been published.

7.7 Issues Relating to Best Execution of Customer Trades

BVI investment business licensees under SIBA must comply with certain dealing and managing rules, including best execution rules, in accordance with the Regulatory Code.

7.8 Rules of Payment for Order Flow

This is not applicable in the BVI.

7.9 Market Integrity Principles

SIBA provides for a market-abuse regime that, in general terms, makes it a criminal offence for a person who has material price-sensitive information about “securities”, within the meaning of SIBA, to deal in, encourage another person to deal in, or to disclose such information inappropriately. In addition, the SIBA market-abuse regime makes it an offence, in summary, for a person to engage in market manipulation or make misleading statements relating to “investments” within the meaning of SIBA. The SIBA market-abuse regime has limited territorial

scope, however, in that an individual does not commit an offence under the regime unless that person was within the BVI at the time when they were alleged to have committed the offence.

As noted, utility tokens are not considered by the FSC to be either “securities” or “investments” under SIBA, and as a result, dealings or statements relating to crypto-assets do not fall within SIBA’s market-abuse regime.

8. HIGH-FREQUENCY AND ALGORITHMIC TRADING

8.1 Creation and Usage Regulations

There is currently no specific regulation pertaining to high-frequency or algorithmic trading in the BVI.

8.2 Requirement to Register as Market Makers when Functioning in a Principal Capacity

If an entity functions in a principal capacity and performs a market-maker role, it will be required either to be licensed or registered under SIBA (eg, as an investment dealer or broker) if the token or the transaction relating to the token falls within the definition of “investment” under SIBA.

8.3 Regulatory Distinction between Funds and Dealers

Pursuant to SIBA, BVI-domiciled investment funds that invest in digital assets need to be licensed by the FSC if they are open-end funds, or approved by the FSC if they are closed-end funds. Investment managers that conduct business in, or from within, the BVI also need to be licensed by the FSC under SIBA. Dealers in digital assets need to be licensed by the FSC if the digital asset or the transaction relating to the digital asset is regarded as an “investment” under SIBA.

8.4 Regulation of Programmers and Programming

This is not applicable in the BVI. See **8.1 Creation and Usage Regulations**.

9. FINANCIAL RESEARCH PLATFORMS

9.1 Registration

The offering of research platforms and services is not presently regarded as investment business that requires a licence under SIBA, unless the operator of the platform also provides investment advice.

9.2 Regulation of Unverified Information

See **7.9 Market Integrity Principles**.

9.3 Conversation Curation

See **7.9 Market Integrity Principles**.

10. INSURTECH

10.1 Underwriting Processes

There do not appear to be any specific and material insurtech underwriting initiatives or developments in the BVI.

10.2 Treatment of Different Types of Insurance

Regulation of insurance business conducted in and from within the BVI includes, but is not limited to, ensuring that any prospective licensees, including domestic or captive insurers, insurance managers, insurance intermediaries (namely, insurance agents or insurance brokers) and loss adjusters, meet the required standards to be licensed. Various categories of insurance licences are provided, depending on where the applicant is incorporated and whether it intends to carry on domestic business.

11. REGTECH

11.1 Regulation of Regtech Providers

Regtech, as such, is not a regulated business in the BVI.

11.2 Contractual Terms to Assure Performance and Accuracy

A number of provisions are being incorporated into contracts with technology providers. The key provisions generally relate to protection of IP rights and confidentiality. The contracts often have provisions requiring the technology providers to safeguard and treat personal data in accordance with certain prescribed standards under data protection laws.

12. BLOCKCHAIN

12.1 Use of Blockchain in the Financial Services Industry

To date, implementation and thought leadership relating to blockchain in the financial services industry in the BVI have predominantly been driven by new players, and a few incumbent service providers.

12.2 Local Regulators' Approach to Blockchain

The BVI government and the FSC have progressed important initiatives in recent years that demonstrate the BVI's unequivocal commitment to digital transformation and fintech innovation, as mentioned in **1.1 Evolution of the Fintech Market**.

12.3 Classification of Blockchain Assets

See **2.2 Regulatory Regime**.

12.4 Regulation of "Issuers" of Blockchain Assets

See **2.2 Regulatory Regime**.

12.5 Regulation of Blockchain Asset Trading Platforms

See **7.1 Permissible Trading Platforms**.

12.6 Regulation of Funds

The intended asset class does not determine whether a scheme that collects and pools investor funds for the purpose of collective investment requires registration or approval under SIBA. Accordingly, a mutual fund or a private investment fund, within the meaning of SIBA, which invests in blockchain assets needs to be registered with, or approved by, the FSC.

Mutual Fund

The open-end mutual fund structure is more common for those managers looking to pursue an investment strategy which focuses on trading in virtual currencies. These strategies tend to be more liquid in nature and investors are able to redeem their investment on their own initiative.

Private Investment Fund

The closed-end private investment fund structure is more common for those managers looking to pursue an investment strategy which focuses on long-term investments in blockchain start-ups or projects. These strategies tend to be illiquid in nature and investors are unable to redeem their investment without the manager's consent.

12.7 Virtual Currencies

See **2.2 Regulatory Regime** and **7.1 Permissible Trading Platforms**.

12.8 Impact of Regulation on "DeFi" Platforms

"DeFi" (decentralised finance) is not a regulated business per se. See **2.2 Regulatory Regime**.

12.9 Non-fungible Tokens (NFTs)

The BVI has not yet adopted the FATF's recommendations on virtual asset service providers.

Once adopted, the implementing legislation will follow the position in relation to NFTs and NFT platforms outlined by the FATF. In particular, the FATF has noted that NFTs (depending on their characteristics) are generally not considered to be “virtual assets”. However, the nature and function of each particular NFT must be considered on a case-by-case basis and, in particular, an NFT may be a “virtual asset” if it can be used for payment or investment purposes. In practice, an NFT is likely to be a “virtual asset” where it is fractionalised and the ownership of the asset can be shared with others. Where this is the case, any activities in the BVI in relation to that NFT will need to be assessed against the implementing legislation to determine whether regulation by the FSC is necessary.

13. OPEN BANKING

13.1 Regulation of Open Banking

Open-banking services are not a regulated activity per se, unless the activity constitutes a payment service within the meaning of the FMSA. Unlike, for example, the second EU Payment Services Directive, the FMSA does not provide for a separate legal framework that regulates open-banking fintech service providers.

13.2 Concerns Raised by Open Banking

As noted in **1.1 Evolution of the Fintech Market**, recently enacted legislation in the BVI includes data protection legislation. See **2.10 Implications of Additional, Non-financial Services Regulations**.

Contributed by: Lucy Frew, Sara Hall, Andrew Howarth and Colm Dawson, Walkers

Walkers is a leading international firm that provides legal, corporate and fiduciary services to global corporations, financial institutions, capital markets participants and investment fund managers. Its clients are Fortune 100 and FTSE 100 companies as well as some of the most innovative firms and institutions across the financial markets. The firm has ten offices, in Bermuda, the British Virgin Islands, the Cayman Islands, Dubai, Guernsey, Hong Kong, Ireland, Jersey, London and Singapore. It advises businesses partnering with or investing in fintech firms, as well as financial institutions and asset manag-

ers developing their own fintech products and services. The fintech group, comprising over 80 lawyers, also works closely with policymakers, regulators and governments to facilitate appropriate legislation and regulation that keeps pace with innovation. Walkers covers fintech's core financial industry sectors – asset management, investment, banking, finance, insurance, trading and exchanges, and payments – with particular expertise in advising businesses specialising in blockchain, virtual assets (including Web3, DeFi and NFTs), the metaverse and alternative model finance.

AUTHORS



Lucy Frew is global head of the regulatory and risk advisory practice group in Walkers' Cayman Islands office and has a long track record in fintech. Lucy is a member of the fintech team,

providing strategic advice, regulatory gap analysis and regulatory impact assessments, as well as assistance with licensing, regulatory compliance, anti-money laundering and counter-terrorist financing requirements, economic substance, data protection and cybersecurity, and tax transparency. She is a member of the Cayman Finance Smart FinTech Regulations Subcommittee, the Cayman Finance Digital Funding and Investing Subcommittee, and the Cayman Islands Financial Services Legislative Subcommittee for FinTech, and has written a fintech column since 2016.



Sara Hall joined Walkers' London office in January 2019, where she is a partner in the regulatory and risk advisory group. Sara is a member of the fintech team and specialises in

British Virgin Islands' and Cayman Islands' law and regulation, and has particular expertise in digital assets, data protection, cross-border compliance and risk management. She frequently advises on compliance with international initiatives such as economic substance laws, AML/financial sanctions compliance, and regulatory change, as well as on fintech transactions, including the licensing of fintech activities, blockchain projects and the regulation of digital assets. She has over 25 years' experience advising clients.



Andrew Howarth is a senior counsel in Walkers' Cayman Islands office in the regulatory and risk advisory group. His clients are predominantly financial services businesses

and specifically, investment funds and service providers to investment funds. In particular, he has provided detailed advice to Cayman Islands fund administrators and fund managers. He advises clients on the practical impact of the Cayman Islands' developing regulatory requirements, including financial regulatory applications and notifications, regulatory compliance, AML/CFT, proliferation financing and international sanctions, CRS and FATCA, economic substance, beneficial ownership, data protection, outsourcing and reliance arrangements, corporate governance and regulatory investigations.



Colm Dawson is a counsel in the regulatory and risk advisory group at Walkers' Hong Kong office. He has experience across regulated financial services providers, including having

spent significant secondment periods in the banking and investment management sectors. His regulatory work experience ranges across regulatory permission applications, change of control notifications on multi-jurisdictional projects including preparing applications for banks, payment institutions, electronic money institutions, fund administrators and investment managers and advisers. He has also worked in-house at a fund administrator and has addressed the practical and commercial challenges of implementing regulatory update and change projects across business lines.

Walkers

171 Main Street
PO Box 92
Road Town
Tortola VG1110
British Virgin Islands

Tel: +1 284 494 2204
Fax: +1 284 494 5535
Email: info@walkersbvi.com
Web: www.walkersglobal.com





Chambers Guides to the Legal Profession

Chambers Directories are research-based, assessing law firms and individuals through thousands of interviews with clients and lawyers. The guides are objective and independent.