



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
British Virgin Islands: Fintech
This country-specific Q&A provides an overview to
Fintech law in **British Virgin Islands**.

It will cover open banking, regulation of
data, cryptocurrencies, blockchain, AI and insurtech.

This Q&A is part of the global guide to Fintech. For a
full list of jurisdictional Q&As
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HARNEYS

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1. **What are the sources of payments law in your jurisdiction?**

The principal legislation governing sources of payments in the BVI are the Banks and Trust Companies Act, 1990 (**BTCA**) and the Money Services Act, 2009 (**FMSA**). The BTCA regulates banking business in the BVI and the FMSA regulates financing and money services business in the BVI.

2. Can payment services be provided by non-banks, and if so on what conditions?

Payment services can be provided by non-bank organisations pursuant to the provisions of the FMSA. The FMSA regulates and licenses firms, other than banks, which provide financing and money services to the domestic population.

3. What are the most popular payment methods and payment instruments in your jurisdiction?

The most popular payment methods and payment instruments in the BVI are:

- cash
- cheques
- bank drafts
- electronic funds transfers
- credit cards/debit cards

4. What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

Open banking is not prohibited under BVI law. However, there is no presently no legal framework such as PSD2, which operates in other jurisdictions, implemented in the BVI. Most BVI operating banks are FDIC registered/Canadian and would most likely adapt the market practice in the USA. Whilst both Canada and the USA have taken steps to recognise open banking, in many cases, they lag behind the EU in this area of innovation. It is expected that once these markets fully embrace open banking, banks in the BVI will fall in line.

5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

At present, the BVI has no direct data protection legislation which would impact on the provision of financial services to consumers and businesses. However, legislation has been drafted and is expected to be implemented in the territory soon. However, the EU General Data Protection Regulation (the **GDPR**), may apply to business as it applies to the processing of personal data outside the EU by controllers/processors established in the EU, regardless of whether the actual processing takes place in the EU. The GDPR also applies to the processing of EU data subjects by non-EU controllers/processors, where the processing activities are related to the offering of goods or services (including over the internet) or the monitoring of behaviour. Hence, certain corporate groups/service providers based in offshore jurisdictions such as the BVI will need to take care that data processing globally meets EU standards.

6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

Regulatory sandboxes are gaining popularity in most developed financial markets and the BVI Government is currently engaged in discussions across industries and countries to assess how a BVI regulatory sandbox can assist innovators to create more affordable products and services and to foster financial inclusion. The BVI regulator has also recently made a public statement on its commitment to helping financial services firms to innovate through regulatory and financial technology.

In addition to the sandbox, exciting industry proposals are currently before the BVI regulator to expand the horizon of the BVI Financing and Money Services Act, 2009 to allow for P2B (including P2B and B2B) lending platforms to operate from in or within the BVI without the need to obtain a licence.

7. Do you foresee any imminent risks to the growth of the fintech

market in your jurisdiction?

There are no imminent foreseeable risks to the growth of the fintech market in the BVI. Of course, the banking industry in the BVI is tied to the currency of the United States and there will therefore be currency risks. As with any type of investment business, there is the usual systemic risks, cyber security risks and money laundering/terrorist financing risks to be aware of. However, fintech itself provides smart data and algorithms to help alleviate these types of issues and the BVI has a robust regulatory framework and competent regulator to assist in managing and minimising these risks.

8. What tax incentives exist in your jurisdiction to encourage fintech investment?

Taxation in the BVI is a relatively straightforward matter and tax incentives are offered to all companies across the board without any type of ring fencing. A BVI company, all dividends, interest, rents, royalties, compensations and other amounts paid by such a company to persons who are not persons resident in the BVI are exempt from all forms of taxation in the BVI. (Including corporation tax, capital gains tax, gift tax, profit tax, inheritance tax, estate duty tax, sales tax or value added tax). Additionally, whilst income tax is still assessed in the BVI for companies and individuals, the rate of taxation is currently set to zero.

Further, the Payroll Taxes Act, 2004 (the **Payroll Taxes Act**) is in force and will apply to a company that has employees rendering services wholly or mainly in the BVI. In such a case, the company will be subject to payroll taxes on remuneration and benefits paid to such persons under the Payroll Taxes Act.

9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

The BVI is attracting ICO structures as well as setting up crypto exchanges. The level of investment can vary from seed capital to fintechs seeking series B funding.

10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

A fintech entrepreneur would choose the BVI as the BVI is a leading offshore financial services jurisdiction with the following advantages:

- British Overseas Territory status;
- political and economic stability;
- a growth oriented government which fosters a vibrant public/private partnership
- English legal system;
- robust financial services legislation with applicable light touch regulatory framework;
- reliable communication infrastructure;
- modern and reliable banking system;
- innovative, flexible, user-friendly legislation with minimal regulations;
- tax neutral jurisdiction; and
- internationally recognised reputation and respectability.

11. Access to talent is often cited as a key issue for fintechs - are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

There are no immigration quotas or caps in force now or imminently that would hinder fintechs' ability to establish physical operations in the BVI. There is however, a labour regulatory regime which requires that a prospective employee who is foreign to the BVI, apply for and obtain a permit to work in the BVI. The work permit process is administrative in nature and generally proceeds seamlessly from application to grant unless a BVI citizen is qualified for and applies for the position to which the work permit relates. If the employee in question is a citizen of a country the nationals of which are required to obtain a visa to enter the BVI, that employee would need to apply for and obtain a visa to work in the BVI by way of an administrative and generally seamless application process. At present, there is little availability of technical expertise in the fintech space in the local professional market in BVI, and as such, we anticipate

that the authorities, who are keen to attract fintechs to BVI, will facilitate the grant of any approvals to facilitate establishment of reputable fintech business in the BVI.

12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

There are discussions underway on ways in which the regulatory environment might be optimised to attract fintech business to the BVI. At present, given that there is not yet widespread proliferation of fintechs with physical operations in the BVI, it is yet to be seen how the industry could impact immigration policy. We are however aware that Government is keen to facilitate the establishment of a substantive fintech industry and anticipate steps being taken shortly to support such establishment.

13. What protections can a fintech use in your jurisdiction to protect its intellectual property?

The BVI Trademarks Act is the legislation governing the protection of intellectual property in the BVI. A fintech can utilise the process provided via this Act to protect their intellectual property rights.

14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

There is presently no recognition of virtual currencies (**VCs**) in the BVI as being equivalent to standard, or better 'fiat', currency (**FC**). As such, any reference in BVI legislation to 'currency' or 'money' will be interpreted so as to exclude VC. Unlike in the EU, there is no specific electronic money regulation in the BVI. As such, BVI definitions of 'money' and 'currency' are dealt with under older domestic legislation. The two principle enactments dealing with the meaning of money in the BVI are the Legal Tender (Adoption of United States Currency) Act 1959 (**LTUSA**) and the Coinage and Legal Tender Act 1973 (**CLTA**). The combined effect of both the LTUSA and the CLTA in the BVI is that the US dollar is recognised as being the legal tender of the BVI, and

in rare cases the BVI Commissioner of Currency, the Financial Secretary, is given limited responsibility for regulating coinage issued under the CLTA (though in practice these powers are used very rarely).

The LTUSA and CLTA aside, all other BVI enactments assume that the reader would understand the meaning of references to money and currency and as such these terms are not generally defined. Consequently, whilst it is clear that such references are not limited to legal tender of the BVI, i.e. US dollars, it is implied that they do refer to FCs more generally and would exclude VCs. As a result, VCs do not fall within the current BVI regulatory framework and are not currently regulated.

15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?

At present, initial coin offerings (**ICOs**) fall within the scope of unregulated activity in the BVI. Hence, subject to complying with certain AML requirements, an ICO can be structured through a BVI company without the need to obtain a licence from the Regulator to conduct the offering.

16. Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?

We are aware of several ongoing blockchain projects structured through BVI vehicles. However, as far as we are aware, Shopin is the only project that is beyond proof of concept, has ended its token generation event and has had successful pilot trials. Two retail pilots showed phenomenal success with registrations at 719k, increase in conversions at 22% and incremental sales generated at \$14.7MM. Shopin is the world's first decentralized shopper profile built on the blockchain. Shopin unites retailers and their customers through personalized data intelligence for an unprecedented shopping experience. Shopin intends to create a more sustainable retail economy where retailers become stronger by working together and shoppers get rewarded based on the value of their data that they fully own, control, and can share. For more information, please see: <https://tokensale.shopin.com/>

17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

As in most industries, the current scope of artificial intelligence being used in the BVI financial sector is what would be classified as “assisted intelligence” or “narrow AI”. However, there are certainly initiatives underway involving machine learning and other related technologies which expand that scope, and regulation is increasingly supportive of those efforts. A recent amendment to the BVI’s AML Code of Practice, aligning it with the latest developments in digital identity verification, is an excellent example of the direction being taken by the jurisdiction.

18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

Insurtech has not yet penetrated the BVI domestic insurance market. This partially reflects the compact size of the marketplace which inhibits investment in technological innovations that may require mass to be effective. Also traditional insurers have to underwrite and manage catastrophic risks which dominate premium pricing and insurers will therefore be less inclined to buy into all the innovations available.

19. Are there any areas of fintech that are particularly strong in your jurisdiction?

Although currently, there are no areas that are particularly strong, we would anticipate incumbent insurers to try more technology such as telematics in motor insurance and use of data from internet enabled devices to customise policies and price premiums.

20. What is the status of collaboration vs disruption in your

jurisdiction as between fintechs and incumbent financial institutions?

Notwithstanding the devastation caused by the 2017 Hurricanes to the territory, the BVI Financial Services Commission's commercial registry, which is a digital registry, remained completely and continuously active during the catastrophic storms and in the aftermath. Service providers were able to access the electronic on line system without any delay or disruption due to business continuity mechanisms having been in place which utilises geographic redundancy and alternative global access points.

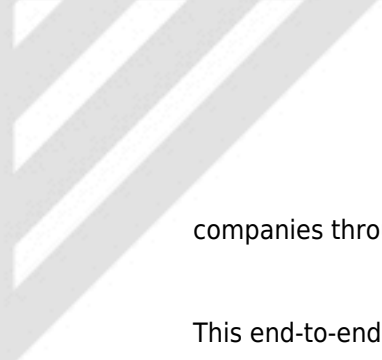
Presently, financial institutions in the territory are eagerly seeking to capitalise on fintech innovation, coming together in a variety of public/private sector committees to determine and forge a way forward. The Financial Services Commission (the **Regulator**) is welcoming the technological advancement and is seeking to guarantee that it regulates at the appropriate level required to ensure that the industry can flourish accordingly.

21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

From our vantage point, banks and other incumbent financial institutions are also already in the process of, or gearing up to, develop their own fintech programmes. By way of example, the most recent bank to be licensed by the BVI FSC, Bank of Asia, is in fact a digital bank. It is currently immersed in a Beta testing environment and is expected to be fully operational within a few months. Embracing the digital age, Bank of Asia will also be using electronic identification and client on boarding solutions in fulfilling its BVI AML obligations as regards knowledge of its customers.

22. Are there any strong examples of disruption through fintech in your jurisdiction?

From a macro perspective, creating a new branch of fintech (corptech), the BVI is excited about its recent launch of the Micro Business Company that will maximize automation and offer an end-to-end user experience with users being able to form and manage their micro business



companies through their smart phones, via apps developed by local corporate service providers.

This end-to-end user experience will also utilize electronic identity solutions through app integrations available through smart phones. As most are aware, despite advances in production methods, it remains possible to create counterfeit physical identity documents such as passports, birth certificates and driver's licences that will pass a cursory examination. As electronic identity solutions are proving to be a more robust solution to combatting money laundering, the BVI has recently amended its AML legislation to embrace the acceptance of digital identity processes. In so doing, the BVI is demonstrating its willingness and diligence to combat money laundering and terrorist financing whilst acknowledging that shift in business models will inexorably cause a shift in the associated governing principles.