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# INVESTMENT BUSINESS REGULATORY REFORMS IN THE BRITISH VIRGIN ISLANDS

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# Investment Business Regulatory Reforms In The British Virgin Islands

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The Securities and Investment Business Act 2010 (SIBA) of the British Virgin Islands (BVI), which took effect in May 2010, requires persons engaged in 'investment business' (as defined below) in or from within the BVI to be licensed thereunder. There are now proposals afoot to take this regulation further by rendering such persons also subject to the BVI's Regulatory Code 2009 ('Regulatory Code').

At the same time, the BVI's financial services regulator, the BVI Financial Services Commission (the 'Commission'), has released for comment the Financial Services (Miscellaneous Exemptions) Regulations 2010 (the 'Regulations') which will ease the regulatory requirements for persons carrying on investment business in certain circumstances.

This article explores the content and implications of these impending reforms.

## Investment business licensing regime

SIBA requires any person who carries on 'investment business' of any kind in or from within the BVI to obtain a licence from the Commission. The regime has a broad application due to the wide definition of 'investment business' and because a BVI company is deemed to be carrying on investment business in the BVI even if all or a substantial part of that business is conducted outside the BVI.

Investment business is defined by SIBA to include the following activities: dealing in investments; managing investments; arranging deals in investments; providing investment advice; operation of an investment exchange, and providing custodial or administration services with respect to investments. 'Investments' include shares, bonds and other debt instruments, derivatives, interests in a partnership or fund, and contracts for difference.

In order for an applicant to be granted an investment business licence, the Commission needs to be satisfied that the applicant, its directors, senior officers and any person having a 'significant interest' in the applicant meet the Commission's 'fit and proper' criteria. 'Significant interest' is defined to mean the right to control 10 percent or more of the voting rights of the applicant or licensee; the right to a 10 percent or more share in any distribution of the surplus assets of the applicant or licensee, and the power to appoint or remove one or more directors of the applicant or licensee.

SIBA also regulates transfer of ownership of a licensee. A person who owns or holds a significant interest in a licensee must not "sell, transfer, charge or otherwise dispose of his interest in the licensee, or any part of his interest", unless the prior written approval of the Commission has been obtained. Furthermore, a person must not acquire a significant interest in a licensee without the Commission's prior written approval.

There is also a requirement for a licensee to prepare and file fully audited financial statements with the Commission on an annual basis.

## Regulatory (Amendment) Code 2010

The Regulatory Code is designed to support, and build upon the requirements contained in, primary financial services legislation in the BVI (e.g., the Insurance Act 2008, which applies to insurance companies). The Regulatory Code can be unilaterally amended by the Commission. This enables BVI regulation of financial services business to keep pace with international best practice standards without having to frequently change the primary financial services legislation.

When introduced, the Regulatory Code expressly applied to banks,

insurance companies, trust companies, company management businesses, and money services businesses in the BVI. It did not apply to investment businesses under SIBA as SIBA had not been enacted when the Regulatory Code came into force.

Now that SIBA has been enacted, the Regulatory (Amendment) Code 2010, released for public comment by the Commission in July this year, once implemented, will extend the general provisions of the Regulatory Code to applicants for and persons holding an investment business licence under SIBA and proposes to include a new Part VII specifically applying to such persons (with the exception of persons operating an investment exchange).

The Regulatory Code, once so amended, will subject applicants for and licensees carrying on investment business to an additional layer of regulation on top of the regulatory requirements imposed by SIBA. Among the additional regulatory requirements that will apply to applicants for and licensees carrying on investment businesses include: (i) in the case of an applicant for licensing, providing the Commission with a comprehensive business plan when applying for a licence (with the exception of an applicant for a fund manager's licence, fund administrator's licence or fund investment adviser's licence); (ii) a requirement for applicants and licensees to have a minimum of two directors (who must be individuals, unless the applicant or licensee is a licensed fund manager, licensed fund administrator or licensed investment adviser); (iii) the need to establish compliance systems and controls, prepare a compliance procedures manual, and appoint a compliance officer (who will be responsible for ensuring compliance by the applicant or licensee with its regulatory obligations); and (iv) the need for a written agreement when licensee is providing services to a retail customer, and for written disclosure of the basis or amount of charges for services prior to providing these services.

It is anticipated that the Regulatory (Amendment) Code 2010 will come into force before the end of 2010.

## Financial Services (Miscellaneous Exemptions) Regulations 2010

Although the Regulatory (Amendment) Code 2010, once implemented, will increase the compliance requirements applicable to applicants for an investment business licence under SIBA and persons holding an investment business licence, the Regulations are, inter alia, designed to ease the compliance requirements for certain licensees in particular circumstances.

It is proposed that: (i) applicants or licensees with no physical presence in the BVI will be exempted from the requirement to have a compliance officer, where the entity is regulated in the jurisdiction where its business is conducted (or is part of a group of companies that is subject to regulatory supervision); (ii) applicants or licensees providing investment management and investment administration services in relation to funds may apply to the Commission to be exempted from the requirement to appoint a compliance officer; (iii) where a licensee requesting the approval of the Commission for a transfer (including a sale, acquisition, charge or any disposal) of securities is a publicly traded company (that is, listed on a recognised exchange) or a part of a parent company that is a publicly traded company, the licensee will not be required to seek approval from the Commission for the transfer, and neither will a person acquiring a significant interest in a publicly traded licensee; and (v) where a licensee has not conducted any business activity in respect of its licence for a particular year, the Commission may ►

exempt the licensee from preparing and submitting audited financial statements for that year.

It is also expected that the Regulations will take effect before the end of 2010.

### Perspective

The BVI's investment business licensing regime is certainly a positive reform to ensure that the BVI is in line with international best practice in this area.

It will ensure that the BVI cements its position as a leading international offshore financial centre with responsible regulation.

Responsible regulation combined with business flexibility is what makes the BVI so attractive, and the investment business licensing regime continues this trend. The avenues for exemption from aspects of the regime through the proposed Regulations re-emphasises that the BVI accommodates and responds to the needs of business, ensuring that flexibility remains a key feature of the BVI's responsible regulatory framework. ■



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