



BVI's Securities and Investment Business Act, 2010 enacted

The Securities and Investment Business Act, 2010 ("SIBA") was enacted by the BVI's House of Assembly on 12 April 2010 and has been published in the Official Gazette. It will become law on such date or dates that are by proclamation published in the Official Gazette.

Once in force, the SIBA will:

- regulate persons carrying on "investment business" in or from within the BVI;
- regulate the public issuance of securities in a non-mutual funds context to persons located in the BVI;
- together with the Mutual Funds Regulations 2010 (the "MFR"), which are anticipated to become law at the same time or shortly after the coming into force of the SIBA, repeal and replace the Mutual Funds Act, 1996 (the "MFA") but the SIBA and the MFR will not make any substantial changes to the current mutual funds regime; and
- introduce a new market abuse regime covering insider dealing and market manipulation.

Part I – Investment Business

The SIBA provides that no person may carry on "investment business" of any kind in or from within the BVI unless licensed by the BVI Financial Services Commission (the "FSC") to carry on such investment business and will apply to, amongst others, broker dealers, investment advisors, custodians, operators of investment exchanges and market makers. In addition, to the extent that the functionaries of closed-ended funds carry on "investment business", such functionaries are now regulated by and will require a licence under the SIBA.

"Investment business" is broadly defined to include, subject to exceptions, dealing in or arranging deals in or managing "investments", providing investment advice, providing custodial or administration services with respect to investments or operating an investment exchange.

"Investments" is defined to include shares, interests in a partnership or fund, debentures, bonds, other debt instruments and derivatives and other interests relating to such investments.

Persons already carrying on investment business at the commencement date of the SIBA are required to obtain a licence from the FSC with six months of the commencement date. If a person is not already carrying on investment business prior to the commencement date of the SIBA, a license will be required to carry on investment business with effect from the date of the commencement of the SIBA.

Licensees are required to comply on an ongoing basis with a number of requirements under the SIBA and the Regulatory Code 2009 including requirements relating to capital resources, the appointment and removal of directors, changes to ownership structures, insurance, corporate governance, segregation of client assets, advertising and such other requirements to be included in a dedicated part of the Regulatory Code 2009.

Part II – Public Issues of Securities

Part II of the SIBA regulates offers of “securities” to the public meaning, with exceptions, offers of securities to “any person” in the BVI but does not include securities issued by mutual funds or offers to “qualified investors”. Public offers, coming within Part II of the SIBA, must be based on a prospectus registered with the FSC and must comply with such requirements as may be prescribed by the FSC in the “Public Issuers Code” (which is expected to be published shortly).

Part III – Mutual Funds

Under Part III of the SIBA and the MFR, the regime applicable to mutual funds is not expected to change radically. The previous regime under the MFA will continue with a two-tier regulatory scheme of private and non-private funds with lighter regulation applicable to private and professional funds and heavier scrutiny on public funds. However, there are now formal legislative requirements for, amongst other matters, private and professional funds to appoint an auditor, to maintain audited accounts, to have a minimum of two directors and for details of the directors and auditor to be included in such funds’ applications for recognition to the FSC.

Part IV – Authorised Representatives, Financial Statements and Audit

Part IV of the SIBA introduces a requirement for all licensees and mutual funds to have at all times an authorised representative unless exempted by having a significant management presence in the BVI as specified in the Regulatory Code 2009. Local service providers (including our corporate services affiliate Appleby Corporate Services (BVI) Limited) will need to apply to the FSC to be approved as an authorised representative.

The functions of an authorised representative are to act as the main intermediary between the licensee or mutual fund and the FSC, to accept service of notices and other documents on behalf of the licensee or mutual fund, to keep in the authorised representative’s office in the BVI such records, or copies of such records, as may be prescribed, to make all submissions to the FSC and to pay all relevant fees on the licensee’s or mutual fund’s behalf.

Part IV of the SIBA also contains a requirement for all licensees and public funds to prepare annual audited financial statements which must be submitted to the FSC. The same requirement, for private and professional funds, is contained in Part 1 of the MFR.

PART V – Market Abuse

Part V of the SIBA introduces criminal offences for persons engaging in insider dealing, misleading statements and market manipulation. A definition for each offence is included in SIBA.

An individual who commits any of the offences of insider dealing, misleading statements or market manipulation is liable to a fine or possible imprisonment.

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