

## **The Securities and Investment Business Act, 2010 of the British Virgin Islands (A Checklist for Private and Professional Funds)**

The Securities and Investment Business Act, 2010 (“SIBA”) and the accompanying Mutual Funds Regulations, 2010 came into effect on May 17, 2010 and have replaced the Mutual Funds Act, 1996. Notwithstanding this, SIBA has not changed the British Virgin Islands (“BVI”) investment funds landscape significantly but rather has codified many of the existing practices. Below is a brief checklist of some of the key obligations under SIBA for private and professional funds.

### **SIBA transition obligations (effective January 1, 2011):**

1. The fund must appoint an authorised representative in the BVI. The authorised representative is similar to a registered agent which must be based in the BVI but it is different. The role of the authorised representative is to specifically act as liaison between the fund and the BVI Financial Services Commission (the “FSC”).
2. The fund must have a fund manager, administrator and custodian. An exemption may be allowed from the requirement to have a fund manager or a custodian but only in very limited circumstances.
3. The fund must submit to the FSC a copy of its offering document which must contain a prescribed warning. Most existing offering documents would generally contain some of the warnings but would need to be updated to include all the prescribed warnings.
4. The fund must appoint an auditor and at all times have an auditor to audit its financial statements. Audited financial statements for each financial year must be submitted to the FSC within 6 months after year end.
5. The fund must have at least two directors, one of whom must be an individual.

### **Other ongoing SIBA obligations:**

1. The fund must notify the FSC at least 7 days prior to the appointment of a new functionary.
2. The fund must notify the FSC within 7 days of a functionary ceasing to act.
3. The fund must notify the FSC within 14 days of the appointment of a director, authorised representative or auditor.
4. The fund notify the FSC within 14 days of a director, authorised representative or auditor ceasing to act.

5. The fund must notify the FSC within 14 days of any change in place of business, any amendments to its constitutional documents or any amendments to its offering documents.
6. The fund must notify the FSC within a reasonably practicable time of any change to the nature and scope of the fund's business.

**O'Neal Webster is able to assist with all aspects of investment funds and other SIBA related matters. For further information please contact Kerry Anderson at [kanderson@onealwebster.com](mailto:kanderson@onealwebster.com) or Christopher Simpson at [csimpson@onealwebster.com](mailto:csimpson@onealwebster.com).**

**This guide is general in scope and is not intended to be comprehensive. It is not a substitute for legal advice.**

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