

## **BVI Securities and Investment Business Act, 2010**

The recently enacted Securities and Investment Business Act, 2010 (“SIBA”) of the British Virgin Islands (“BVI”) will come into effect on 17 May 2010.

The primary objectives of SIBA are to:

- 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;
- repeal the Mutual Funds Act, 1996 and replace it with Part III of SIBA and the Mutual Funds Regulations which also take effect on 17 May 2010; and
- introduce a new market abuse regime covering insider dealing and market manipulation.

It should be noted that SIBA and the Mutual Funds Regulations will not make any substantial changes to the current mutual funds regime in the BVI.

### **Investment Business**

SIBA regulates “investment business” in or from within the BVI and provides that no person may carry on “investment business” of any kind in or from within the BVI unless they are licensed by the BVI Financial Services Commission (“FSC”) to carry on such investment business.

The types of activity constituting investment business are broadly defined in Schedule 1 of SIBA as follows:

- dealing in investments;
- arranging deals in investments;
- managing investments;
- providing investment advice;
- providing custodial services with respect to investments;
- providing administrative services with respect to investments; and
- operating an investment exchange.

Schedule 2 of SIBA provides for the exemption of certain types of investment activities from constituting investment business and the exemption of certain types of persons conducting investment business from the requirement to hold an investment business licence under SIBA. For the purposes of SIBA, “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.

SIBA allows for a transition period in that persons already carrying on investment business as at 17 May 2010 are required to obtain a licence from the FSC with six months of that date whilst persons not already carrying on investment business would be required to obtain a licence in order to commence investment business.

Once licensed, firms are required to implement a number of systems and controls for the operation of their businesses, including requirements relating to the appointment and removal of directors, capital resources, changes to ownership structures, insurance, corporate governance, segregation of client assets, advertising and rules on corporate and other administrative requirements.

### **Public Issues of Securities**

Part II of SIBA introduces a new regime to regulate any person who wish to offer issues of securities to “the public” in the BVI, but does not include securities issued by mutual funds or offers to “qualified investors” (which includes listed companies, FSC regulated entities and persons having a close connection with the issuer and professional investors). Public offers, coming within Part II of 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.

As an ongoing obligation for public issuers, any amendments or supplements to a registered prospectus are also required to be registered with the FSC and a copy of all such amendments or supplements made available to every person who received a copy of the original prospectus.

### **Mutual Funds**

As at 17 May 2010, the Mutual Funds Act, 1996 will be repealed and replaced with Part III of SIBA, the Mutual Funds Regulations and the Public Funds Code. Notwithstanding the introduction of SIBA, the fundamental structure of the BVI mutual funds regime will not be changed and in many instances SIBA has merely codified existing FSC policies.

There are, however, some notable changes introduced by SIBA including the following:

- a codification of the requirement for BVI funds to have at least two directors;
- a requirement for all BVI funds to appoint an authorized representative resident in the BVI (being an agent licensed by the FSC to provide authorized representative services);
- a change in the minimum initial investment requirement which may be made by investors investing in professional funds, requiring, subject to limited exceptions, all investors to make an initial minimum investment of at least US\$100,000 (the previous requirement was that only a majority of the investors into professional funds were required to invest at least US\$100,000);
- a requirement for professional and private funds intending not to appoint either an investment manager, administrator or custodian to apply to the FSC for an exemption from the requirement to appoint such a functionary; and
- a general audit requirement for private and professional funds although funds may apply for an exemption from this requirement.

## **Market Abuse**

SIBA introduces criminal offences for BVI based individuals who conduct insider dealing, carry on market manipulation or make misleading statements relating to investment business. These provisions are intended to bring the BVI in line with internationally accepted standards for the prevention of market abuse and similar financial crimes.

In summary, insider dealing occurs where an insider, being a person in receipt of “inside information”, deals in price-affected securities (or encourages another person to deal, or discloses the inside information to another person otherwise than in the course of his employment). Further, a person commits the offences of misleading information and market manipulation, where he makes a statement, promise, forecast he knows to be deceptive, dishonestly conceals any material facts or recklessly makes a statement which is misleading, false or deceptive.

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**O'Neal Webster is a well established full service law firm located in the British Virgin Islands providing legal services to both international and local clients. The firm is a member of Lex Mundi, the world's largest association of independent law firms.**

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**This discussion is general in scope and is not intended to be comprehensive. It is not a substitute for legal advice. We intend to publish a more detailed Guide on SIBA shortly.**

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