

## **New Securities and Investment Business legislation in the BVI**

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The BVI's Securities and Investment Business Act, 2010 ("**SIBA**") has finally been introduced after a number of years in the making. It applies to a wide range of institutions and financial intermediaries and, save for certain transitional provisions for pre-existing service providers, came into force on 17 May 2010.

SIBA consists of four distinct regimes: part I applies to investment businesses, part II sets out restrictions on issuing securities to the BVI public, part III replaces the old mutual funds regime and part V outlines new rules on market abuse – we outline each of these new regimes in more detail below. The other parts of SIBA (IV and VI) outline provisions which are of general application to licensed entities.

### **Investment Business Regime**

This new regime sets out a licensing requirement which can apply to anyone carrying on "investment business" in relation to an "investment" in or from within the BVI. Typical activities include dealing, arranging, advising, managing, custody and administration. Typical investments include shares, bonds, units, life insurance products and derivatives (options, futures and contracts for differences). Firms conducting investment business will need to be licensed by the BVI Financial Services Commission ("**FSC**") unless they fall within one of the safe-harbours included in SIBA.

Once licensed, firms will need to observe a number of compliance requirements typical to financial institutions operating in well-developed jurisdictions.

The new regime will, in general, apply to BVI-domiciled firms, however in some instances it may extend to non-BVI entities where those entities actively 'solicit' BVI-based individuals and firms in relation to investment business.

### **Public issues of securities**

This regime restricts the issuing, to the "public" in the BVI, of securities such as shares, bonds, warrants and options. Anyone issuing securities in this way will be required to register a prospectus of the offering with the FSC and comply with the provisions of SIBA and a forthcoming Public Issuers Code. The regime comes into force in October this year.

## Replacement of the old mutual funds regime

The old Mutual Funds Act, 1996 has now been repealed. SIBA retains much of the old landscape of public, private and professional funds save that a number of long-standing market best practices for the BVI funds industry have at the same time been formalised into rules and regulations, for example:

- the requirement to have two or more directors – one of whom should be an individual; and
- the need for financial statements of all mutual funds to be audited.

A few entirely new requirements have been introduced:

- the minimum initial investment for all, not just a majority of, professional investors in a professional fund is US\$100,000 (unless the investor is an exempted investor); and
- a requirement employing an ‘authorised representative’, who acts as a conduit between the FSC and the fund for administrative purposes.

## Market abuse regime

This new regime establishes three new offences of insider dealing, market manipulation and making misleading statements. In general the offences apply only where the conduct constituting the offence actually occurs in the BVI – so officers and staff of BVI entities based physically outside the BVI are unlikely to be affected. The legislation brings the BVI into line with internationally accepted standards for the prevention of market abuse. Fines of up to US\$50,000 as well as prison sentences can be imposed on offenders.

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