

Legal Update

BVI Securities and Investment Business Act, 2010

On 12 April 2010 the British Virgin Islands (“BVI”) enacted the Securities and Investment Business Act (“SIBA”).

SIBA introduces a new investment business licensing regime in order to regulate persons (including individuals, undertakings and mutual funds) that carry on investment business of any kind in or from within the BVI.

A BVI Business Company that carries on, or holds itself out as carrying on, investment business outside the BVI is still deemed to carry on, or hold itself out as carrying on, investment business from within the BVI. Persons such as investment advisers, those dealing in investments or arranging dealings in investments, managers, custodians, those providing administration services with respect to investments, and operators of investment exchanges are now required to be licensed.

SIBA also introduces regulation and restrictions on public issues of securities other than for mutual funds.

Under the public issues provisions (subject to limited exceptions) no security may be offered to the public in the BVI unless (i) the offer is contained within a “registered prospectus”, and (ii) the offer complies with the Public Issuers Code.

Part III of SIBA replaces the current Mutual Funds Act. SIBA provides for mutual funds to fall into one of four categories: public funds, professional funds, private funds and recognised foreign funds. Mutual funds that carry on business outside the BVI are deemed to carry on business from within the BVI (and are therefore subject to regulation) if they are BVI Business

Companies, partnerships formed under the laws of the BVI, or unit trusts governed by the trust laws of the BVI and managed from within the BVI.

Although the provisions between the Mutual Funds Act and SIBA are largely similar, there are some notable changes including:

- the requirement for professional and private funds to audit their financial statements on a yearly basis;
- a codification of the requirement for BVI funds to have at least two directors;
- the restriction of professional funds to offerings only to professional investors investing a minimum sum of \$100,000; and
- a requirement for all BVI funds to appoint an authorised representative resident in the BVI (being an agent licensed by the FSC to provide authorised representative services).

In addition, SIBA introduces a market abuse regime which provides for insider dealing and market manipulation offences for the first time in the British Virgin Islands.

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