



NEWHAVEN BVI

The Virgin Islands long awaited Securities and Investment Business Act, 2010 (SIBA) will be introduced on May 17th 2010. Certain transitional provisions are provided for which have the effect of postponing some of the obligations and requirements under SIBA until either August or October 2010.

SIBA provides for:

- A new investment business-licensing regime to regulate investment advisors, broker-dealers, market makers, custodians and operators of investment exchanges.
- Adoption of restrictions on, and regulation of public issues of securities in a non-mutual funds context.
- Repeal of the Mutual Funds Act 1996 and replacement with Part III of SIBS and the Mutual Funds Regulations and Public Funds Code.
- Introduction of a market abuse regime, which provides for offences of insider trading, circulating misleading information and market manipulation.

Investment Business Regime

Any person carrying on "investment business" in or from within the Virgin Islands will be required to hold a licence, issued by the BVI Financial Services Commission (FSC), covering the relevant categories of investment business. Investment business being defined by reference to certain "investment activities" in relation to "investments".

These terms are set out in detail in Schedules 1 and 2 of SIBA. It is important to note that the scope of SIBA includes:

- any BVI Business Company which carries on investment business anywhere in the world even if the only tie with the Virgin Islands is the location of its registered office and;
- any person who solicits a person in the Virgin Islands (including BVI Business Companies) in order to offer the investment services.

Licensed firms will be required to implement a number of systems and controls for the operation of their businesses, in particular rules on corporate governance, the control of advertisements, approved persons regime, conduct of business rules and other administrative requirements.

Under Virgin Islands law contracts and transactions may, in some cases, be rendered unenforceable where they are entered into by persons who conduct investment business without a license and in breach of the 'perimeter' set out in SIBA. This has very important implications for the structuring of many transactions involving BVI Business Companies.



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Public Issues of Securities

Part II of SIBA introduces a new regime to regulate any person who wishes to offer issues of securities to “the public” in the BVI. If within the scope of the new regime, the firm issuing securities will be required to register a prospectus with the FSC and to comply with a number of requirements to be set out in the forthcoming Public Issuers Code. With this new regime an “international” BVI Business Company will not be restricted from offering its securities outside of the BVI. Additional foreign issuers, and their agents can continue to send offerings of securities to “international” BVI Business Companies provided such offers are not received in the BVI.

Issues of securities by mutual funds registered or recognised under SIBA do not fall within the new public issuer regime. In addition a number of exclusions exist where the offer is made to ‘qualified investors’ (which includes listed companies, FSC regulated entities and persons having a close connection with the issuer and professional investors).

This part of SIBA is not due to come into force on 17th May 2010; it is expected that this will be introduced in October 2010.

Mutual Funds

On May 17th 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.

The general structure and landscape of the BVI Mutual Funds industry will remain with the categories of public, private and professional funds being retained. Investment managers and fund administrators, which are currently licensed under the Mutual Funds Act, 1996, will be licensed under Part I of SIBA. Many of the proposed changes codify current FSC practice; noteworthy points:

- A general audit requirement for private and professional funds although funds may apply to be exempt from this requirement
- The minimum initial investment for a professional fund of \$100,000 will apply to all investors other than certain exempt investors (primarily functionaries and their employees) rather than applying to a majority of investors as is currently required.
- All fund, managers, administrators and other licensees will be required to have an authorized representative unless they have “significant management presence” in the Virgin Islands – such term to be defined in subsidiary legislation.
- There is a general requirement for private and professional funds to have an offering document and to appoint a manager, administrator and custodian (the FSC may exempt a fund from any requirement other than the requirement to have an administrator).
- A requirement to notify the FSC of various matters including changes of directors and functionaries and updates to offering documents
- A requirement for all funds to have at least two directors, one of whom must be an individual.



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Market Abuse

SIBA introduces criminal offences for individuals, based in the Virgin Islands who conduct insider dealing, carry on market manipulation or make misleading statements relating to investment business. In general the legislation seeks to bring the Virgin Islands in line with internationally accepted standards for the prevention of market abuse and similar financial crimes.

Fines of up to US\$50,000 and prison terms of up to three years may be levied on person s guilty of these new crimes.

As a result of the recognition of market abuse as a financial crime under SIBA, person who commit such crimes outside the Virgin Islands (eg. Traders in New York, London, Tokyo) but use BVI Business Companies to structure transactions for process profits which make use of the proceeds of these crimes will now be more likely to commit a money laundering offence in the Virgin Islands.