

Ongoing regulatory obligations for investment business licensees

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The following is a summary of the ongoing regulatory obligations owed by investment business licensees (a "Licensee") under the Securities and Investment Business Act, 2010 ("SIBA") and the Regulatory Code, 2009 as amended (the "Regulatory Code").

Broadly speaking, the ongoing obligations owed under SIBA and the Regulatory Code break down into two types of obligations, being filing obligations and operational obligations.

Filing Obligations

1. The prior written consent of the FSC is required prior to the following actions:

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2. A change of name of a Licensee must be notified to the FSC within 21 days - *Section 14(1) of SIBA*.
 3. A Licensee's audited accounts and report, together with a directors' certificate must be filed with the FSC within six months of the financial year end - *Section 71(1) of SIBA*.
 4. A Licensee's annual compliance report must be submitted to the FSC and this obligation exists even where an exemption from having a compliance officer has been granted - *Section 45(1)(b)(ii) of the Regulatory Code*.
 5. Notification as soon as reasonably practicable of a significant event reasonably material to the FSC's fit and proper assessment of the Licensee's directors, senior managers, auditor or significant owners - *Section 16(2) of the Regulatory Code*.
 6. Unresolved significant complaints to be notified to the FSC if unsettled for more than 3 months and complainant advised that it may inform the FSC directly of its complaint - *Sections 69B(4) and (5) of the Regulatory Code*.
 7. Disclosure to the FSC in relation to any matter that might reasonably be expected to have a significant regulatory impact - *Section 70(1) of the Regulatory Code*.
 8. Notification immediately of:
 - (a) any insolvency event involving the Licensee;
 - (b) striking off of the Licensee from the register of companies;
 - (c) significant claim against the Licensee;
 - (d) commencement of a regulatory investigation overseas in relation to the business or affairs of a Licensee;
 - (e) the taking of enforcement or disciplinary action by a foreign regulatory authority against a Licensee;
 - (f) prosecution or conviction of the Licensee, any of its directors or senior managers relating to financial services or involving fraud or dishonesty;
 - (g) granting or refusal of a license by a foreign regulatory authority;

(h) commission by an employee of the Licensee of a fraud against a customer of the Licensee;

(i) Licensee becoming aware of any fraud committed against it;

(j) any matters material to the fit and properness of the Licensee or any person having a significant interest in it or any of its directors or senior managers;

(k) any significant failure of a Licensee's systems or controls;

(l) any material breach of capital or financial resources requirements imposed upon the Licensee (if any)

Section 72 and Schedule 3 of the Regulatory Code.

9. Notification immediately of any serious compliance breach - *Section 45(1)(b) of the Regulatory Code.*

10. Notification immediately upon a Licensee ceasing to have two directors - *Section 19(7)(a) of the Regulatory Code*

11. Notification of any proposed restructuring or reorganisation of the Licensee within a reasonable time prior to the proposed restructuring or reorganisation - *Section 72 and Schedule 3 of the Regulatory Code.*

12. Notification within 14 days of any transfer of an interest in a Licensee:

(a) by operation of the law or pursuant to an order of the Court where the person whose interest is transferred held a significant interest or as a result of the transfer, a person becomes the holder of a significant interest;

(b) any transfer of an interest in a Licensee which does not require the FSC's approval; and

(c) change of address of principle office.

Section 72 and Schedule 3 of the Regulatory Code.

Operational Obligations

1. Financial resources - ensuring the Licensee's financial resources are sufficient to maintain its business in a financially sound condition - Section 7(1) of SIBA and are adequate to support its business given the nature, size, complexity, structure and diversity of that business and its risk profile - *Section 181 (1) of the Regulatory Code.*

2. Continued fit and proper criteria in relation to the Licensee, its directors and senior managers, auditors or significant owners - *Section 16 of the Regulatory Code*.
3. Directors - a Licensee must have at least two directors - Section 19(2)(a) of the Regulatory Code and where it ceases to have two directors, having notified the FSC immediately of this fact and shall within a period not exceeding 21 days submit an application for the approval of a replacement director - *Section 19(7)(b) of the Regulatory Code*.
4. Insurance coverage - a Licensee shall maintain professional indemnity insurance at such level as is appropriate based on the nature, size, complexity, structure and diversity of the business, or to have obtained an exemption from this requirement - *Section 13 of SIBA and Section 182(1) of the Regulatory Code*.
5. Shares - all shares in a Licensee shall be issued fully paid for cash, unless permitted to the contrary by the Regulatory Code or authorised by the FSC in writing - *Section 9(1) of SIBA and bearer shares are forbidden - Section 16(1) of SIBA*.
6. Maintenance of records - a Licensee is required to maintain such records to show and explain its transactions and enable its financial position to be determined with reasonable accuracy and such records should be maintained for a period of at least five year years - *Sections 17(1) and (3) of SIBA and Section 39(2) of the Regulatory Code*.
7. Client assets - client assets should be properly identified, appropriately segregated and accounted for and properly protected - *Section 18(1) of SIBA and Sections 200 to 202 of the Regulatory Code*.
8. Advertisements and statements - prohibition against advertisements or statements that are known to be, or are reckless as to whether they are, false or misleading, or which contain an incorrect statement of fact - *Section 19(1) of SIBA*.
9. Authorised representative - a Licensee is required to have at all times an authorised representative, unless it has a significant management presence in the BVI - *Section 65(1) of SIBA*.
10. Auditor - a Licensee is required to have at all times an auditor, who is qualified under the Regulatory Code to act and has consented to acting - *Section 75(1) of SIBA*.

The auditor chosen must be an "approved auditor" - Section 56 (5)(b) of the Regulatory Code and Section 75(2)(c) of SIBA unless the Licensee holds one of the following categories of investment business licenses:

- (a) Category 3B (provision of investment management services to funds);
- (b) Category 4B (provision of investment advisory services to funds); or
- (c) Category 6B (provision of administration services to funds) - Section 56(6) of the

Regulatory Code.

11. Audit and Financial statements - a Licensee is required to prepare audited accounts for each financial year that comply with prescribed accounting standards - *Section 70(1) of SIBA*.

12. Conduct of business - a Licensee is required to conduct its business at all times in accordance with the following six high level principles:

(a) Integrity;

(b) Management and Control - organise and control affairs effectively and have adequate risk management systems in place;

(c) Financial Resources maintained and adequate - to be determined by the board of directors and reviewed on an annual basis;

(d) Customers' Interests - have due regard for the interests of its customers and treat them fairly and maintain adequate arrangements to protect customers' assets and shall manage conflicts of interest fairly;

(e) Transparency in its business arrangements; and

(f) Relationship with Commission - deal with the FSC in an open and cooperative manner.

Section 8 of the Regulatory Code.

In conducting business, a Licensee must act honestly, fairly and with due skill, care and diligence - *Section 183 of the Regulatory Code*.

For Licensees acting as the functionary of a fund, namely Licensees holding one of the following licenses:

(a) Category 3B (provision of investment management services to funds);

(b) Category 4B (provision of investment advisory services to funds);

(c) Category 5B (provision of custody services to funds); or

(d) Category 6B (provision of administration services to funds),

a Licensee is also required to act in the best interests of the fund (or if acting for more than one fund, ensure all funds are, between each other, dealt with fairly and no fund is given an unfair advantage) and as between investors, ensure that all investors are treated fairly - *Section 184 of the Regulatory Code*.

For Licensees conducting investment business with retail customers, it is required to do so under a

written agreement signed by both the Licensee and the customer - *Section 186(1) of the Regulatory Code*. For non-retail customers, the Licensee is required to provide the customer with the terms on which such services will be provided - *Section 187(1) of the Regulatory Code*. In either case, also complying with the disclosure, client suitability and dealing and managing requirements of Sections 188 to 197 of the Regulatory Code.

13. Systems and controls - a Licensee's systems and controls must be reviewed regularly to ensure its corporate governance framework is appropriate for the nature, size, complexity, structure and diversity of the business - Sections 18(1) and (2) of the Regulatory Code and reviewed at least on an annual basis to ensure capital adequacy - *Section 181(4) of the Regulatory Code*.

14. Conflicts of interest policy - a Licensee must establish, maintain and implement a conflicts of interest policy, which identifies potential conflicts of interest, sets out procedures for ensuring fair treatment of customers and, where applicable, takes into account potential conflicts arising as a consequence of being part of a group - *Section 199(1) of the Regulatory Code*.

15. Control of non-BVI subsidiaries - a Licensee must have an appropriate and effective corporate governance framework in place for its non-BVI subsidiaries - *Section 23 of the Regulatory Code*.

16. Strategies, policies, systems and controls - a Licensee must establish and maintain strategies, policies, systems and controls as are appropriate given the nature, size, complexity, structure and diversity of the business and the degree of risk associated with each area of its business - *Section 25 of the Regulatory Code*.

17. Risk management strategy - a Licensee must establish and maintain a risk management strategy - Section 26 of the Regulatory Code which must be reviewed periodically by the board of directors - *Section 20(2) of the Regulatory Code*.

18. Business continuity policy and arrangements - a Licensee must establish and maintain a business continuity policy and arrangements as are appropriate given the nature, size, complexity, structure and diversity of the business and the degree of risk to which it is exposed, and such policies must be regularly reviewed and tested - *Sections 27(1) and (2) of the Regulatory Code*.

19. Internal controls and information systems - a Licensee must establish, maintain and monitor on an on-going basis its internal controls and information systems - *Sections 30 to 32 of the Regulatory Code*.

20. Compliance - a Licensee must establish, maintain and implement a compliance policy and systems which are appropriate for the nature, size, complexity and diversity of the business, such compliance policy to be reviewed annually and documented in the compliance manual - *Section 41 of the Regulatory Code*.

21 Compliance officer - a Licensee must appoint an experienced compliance officer, or have obtained

an exemption from this requirement - *Section 34(3) of the Financial Services Commission Act, 2001.*

22. Complaints - a Licensee must establish and maintain a complaints register, which details how complaints have been or are being dealt with - *Section 69A of the Regulatory Code.*

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