

Securities and Investment Business Act, 2010

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After much anticipation, the British Virgin Islands (“BVI”) enacted the Securities and Investment Business Act, 2010 on 12 April 2010 (“SIBA”). SIBA, which came into force on 17 May 2010 (with the exception of the provisions relating to public issues of securities), takes into full account current and emerging international standards of regulation as they relate to the regulation and administration of investment funds (including hedge funds) and entities conducting investment or securities business. It represents an extremely important step for the ongoing development and growing sophistication of the financial services sector within the BVI. It also provides a user friendly statute, in tune with the current regulatory environment, which will complement the BVI Business Companies Act, 2004 and the Insolvency Act, 2003.

SIBA has four principal objectives, being to:

The key features of SIBA are as follows:

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Any person carrying out activities constituting “investment business” in or from within the BVI will be required to hold an investment business licence specifically authorising that kind of investment business, unless either those activities constitute an excluded activity or the entity conducting the investment

business is an excluded person). The types of activity constituting investment business are as follows:

Significantly, the scope of SIBA will cover (i) any BVI company carrying on investment business anywhere in the world and (ii) any BVI or non-BVI entity conducting investment business in the BVI.

Once licensed to conduct investment business, SIBA makes provision for various systems and controls for the operation of a licensee's business, covering corporate governance, advertisements and other administrative functions. A further regulatory regime will be implemented through the Regulatory Code, 2009 (the "Regulatory Code") which came into force in the BVI on 1 February 2010 and is being amended to capture investment business licensees.

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Another feature of SIBA is that it introduces provisions regulating the offering of securities into the BVI.

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. For these purposes, an offer of securities to any person in the BVI or an offer received by a person in the BVI is an offer of securities to the public. Importantly, the mere receipt by a BVI company at its registered office of an offer of securities will not, in itself, be sufficient to make that offer constitute a public offer.

In addition to the normal common law remedies available, SIBA also gives the Courts the powers to grant a compensation order in favour of subscribers who purchased securities offered pursuant to a public offer in reliance of a prospectus and suffered loss or damages as a consequence of any untrue or misleading statement contained within that prospectus or omission from that prospectus.

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SIBA repeals the Mutual Funds Act, 1996 and introduces an updated and modernised statutory regime for the regulation of the BVI funds industry, through SIBA and the Mutual Funds Regulations, 2010. The framework for the regulation of BVI funds is not materially altered by the enactment of SIBA and

most of the popular concepts remain. Many of the legislative changes made under SIBA and the Mutual Funds Regulations, 2010 merely codify the existing FSC policy which has developed over recent years in line with evolving international standards.

Notable changes introduced by SIBA are as follows:

In addition to the above, SIBA codifies the current FSC policies in relation to ongoing reporting obligations for funds.

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SIBA introduces a market abuse regime which introduces prohibitions against insider dealing in the BVI. The market abuse regime introduced under SIBA is very much in line with accepted international standards.

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SIBA provides for transitional provisions which are applicable for existing BVI entities which are, on the date of it coming into force either currently licensed under the Mutual Funds Act, 1996 or currently carrying on business activities which constitute “investment business”. These transitional provisions will apply during the first six months following the enactment of SIBA and will enable such entities to come into compliance with SIBA during the transitional period without being in breach of the new regulatory regime, so facilitating the smooth transition of such entities into this regime.

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In 2010, the fundamental importance of lucid regulation governing the global financial services industry has never been more appropriate. Against this backdrop, the BVI has continued to develop its reputation as a leading financial centre for the facilitation of international business and finance. SIBA is a new addition to an existing robust and transparent regulatory regime and underlines the BVI's significance as an integrated financial centre which plays an important role in the global economy.

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