



VIRGIN ISLANDS

SECURITIES AND INVESTMENT BUSINESS ACT

Statutory Instruments

Revised Edition

showing the law as at 1 January 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

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101

S.I. 29/2010 .. in force 17 May 2010 (S.I. 21/2010)

Amended by S.I.: 83/2010 .. in force 16 December 2010



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**INVESTMENT BUSINESS
(APPROVED MANAGERS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

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**INVESTMENT BUSINESS (APPROVED MANAGERS) REGULATIONS –
SECTIONS 40C(1) AND 62
(S.I.s 54/2012 and 88/2013)**

Commencement

[10 December 2012]

PRELIMINARY PROVISIONS

Short title

1. These Regulations may be cited as the Investment Business (Approved Managers) Regulations.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act;

“applicant” means a person who has applied to the Commission to be an approved investment manager;

“approved investment manager” means a person who is approved as such by the Commission under regulation 7;

“authorised representative” means a person who has been certified as such by the Commission under section 64 of the Act;

“closed-ended fund” bears the meaning provided in the guidelines issued under regulation 9(3);

“Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act;

“legal practitioner” means a person who has been admitted to practice as a legal practitioner under Part IV of the Eastern Caribbean Supreme Court Act;

“relevant business” means any type of investment business referred to in regulation 9 which may be carried on by an approved investment manager; and

“prescribed” means prescribed by the Commission.

(2) Nothing contained in these Regulations shall be construed as preventing a person from applying to be licensed as an investment manager or investment adviser under the Act instead of being approved as an investment manager under these Regulations.

(3) Any reference in these Regulations to an applicant, approved investment manager or any other person being fit and proper shall be construed in accordance with the fitness and propriety criteria established in Schedule 1A of the Regulatory Code.

Application of these Regulations

3. (1) The provisions of these Regulations apply to a person who—

- (a) is a BVI business company; or
- (b) is a limited partnership registered under the Partnership Act; and
- (c) submits an application under regulation 4 to be approved as an investment manager; and
- (d) is approved by the Commission under regulation 7(1). (*Amended by S.I. 88/2013*)

(2) Save as may be otherwise provided in these Regulations, where a person is approved as an investment manager under regulation 7, the provisions of section 4(1) of the Act and the Regulatory Code shall not apply in his or her case.

Application for approval as an investment manager

4. (1) A person who wishes to be considered for approval as an investment manager may submit an application to the Commission in the prescribed form.

(2) An application under subregulation (1) must be submitted to the Commission at least 7 days prior to the intended date for the commencement of relevant business, unless the Commission accepts in writing a shorter period.

(3) Subject to subregulation (4), where an application is made pursuant to subregulation (1) within the period specified in subregulation (2), the person to whom the application relates may commence and carry on relevant business for a period of up to 30 days from the date of submission of the application.

(4) The Commission may, either on its own volition or on the application of an applicant in the prescribed form, extend the period specified in subregulation (3) for an additional period of up to 30 days.

(5) A person who commences and carries on relevant business in accordance with subregulation (3) is deemed to be approved as an investment manager for the period in which he or she carries on relevant business in reliance on subregulation (3) and, where applicable, subregulation (4).

(6) If the Commission does not grant approval to an application made under subregulation (1) within the period specified in subregulation (3) or, where an extension has been granted under subregulation (4), within the extended period, the person carrying on relevant business as an investment manager shall cease carrying on relevant business upon the expiry of the specified period or extended period, as the case may be.

(7) During the period in which a person carries on relevant business as an investment manager in accordance with this regulation, he or she does not commit an offence or a breach and shall not be liable to any enforcement action.

Required information

5. (1) An application for approval as an investment manager under regulation 4 shall be signed by a director or general partner of the applicant, accompanied by the following—

- (a) a copy of the applicant's constitutional documents;
- (b) the details of each director or general partner and senior officer of, and each person who owns or holds an interest in, the applicant; (*Amended by S.I. 88/2013*)

- (c) a written declaration by the applicant that each director or general partner and senior officer of, and each person who owns or holds a significant interest in, the applicant is fit and proper in accordance with Schedule 1A of the Regulatory Code;
 - (d) the number and details of the funds that the applicant intends to act for upon commencement of relevant business;
 - (e) the date on which the applicant intends to commence relevant business;
 - (f) a copy of the investment advisory or investment management agreement between the applicant and each person that the applicant intends to act for upon commencement of relevant business;
 - (g) a written confirmation as to which individual will be carrying out the day-to-day investment business functions of the applicant;
 - (h) a written confirmation as to whether or not the applicant has delegated or intends to delegate any of its relevant business functions;
 - (i) a written confirmation from the applicant's legal practitioner that the legal practitioner has agreed to act for the applicant; and
 - (j) a written declaration by the applicant's authorised representative or legal practitioner that the application for approval as an investment manager is complete and meets the application requirements of these Regulations.
- (2) For the purposes of—
- (a) subregulation (1)(b), the required details of each director or general partner, senior officer and shareholder shall be in the prescribed form;
(Amended by S.I. 88/2013)
 - (b) subregulation (1)(c) and (j), the written declaration shall be in accordance with the prescribed form;
 - (c) subregulation (1)(d), the details of the funds shall comprise the name, address and place of incorporation or registration of each of the funds;
 - (d) subregulation (1)(g) and (h), the written confirmation shall be in the prescribed form; and
 - (e) subregulation (1)(i), the written confirmation shall be in the form of a letter addressed to the Commission.
- (3) Where in relation to subregulation (1)(g) the applicant has delegated or intends to delegate any of its relevant business functions, he or she shall—
- (a) outline the functions that have been delegated or that he or she intends to delegate;
 - (b) indicate the person to whom the functions have been delegated or are intended to be delegated; and
 - (c) provide a copy of the agreement relating to the delegation.
- (4) Where an application does not comply with the requirements of this regulation or is not accompanied by the requisite fee required under regulation 6, the application shall be considered incomplete.

(5) An application that is considered incomplete by virtue of subregulation (4) may be denied by the Commission.

Fees

6. (1) Every application for approval as an investment manager shall be accompanied by such fee as may be prescribed in accordance with section 62 of the Financial Services Commission Act.

(2) The continued approval of an approved investment manager may, subject to compliance with regulation 16(1), be renewed annually upon payment of the requisite fee (“the renewal fee”).

(3) Where an approved investment manager fails to pay the renewal fee referred to in subregulation (2) after the renewal has become due and payable, the approved investment manager shall be liable to the penalty prescribed for late payment of fee under Schedule 2 of the Financial Services (Administrative Penalties) Regulations as if the approved investment manager were a licensee.

(4) Where an approved investment manager becomes liable to the maximum penalty prescribed in Schedule 2 of the Financial Services (Administrative Penalties) Regulations, he or she shall—

- (a) cease to function as an approved investment manager under regulation 8(1); and
- (b) not carry on relevant business as an approved investment manager,

if, within 30 days after he or she has become liable to the maximum penalty, he or she fails to pay the renewal fee and the applicable maximum penalty.

(5) The processes and procedures outlined in the Financial Services (Administrative Penalties) Regulations in relation to the payment of penalty for late payment of the renewal fee shall not apply in relation to an approved investment manager.

Decision by the Commission

7. (1) Where the Commission, upon—

- (a) receipt of an application under regulation 4; and
- (b) being satisfied that—
 - (i) the required information under regulation 5 has been provided;
 - (ii) the required fee payable pursuant to regulation 6 has been paid;
 - (iii) the applicant is fit and proper and will, upon approval, be in compliance with these Regulations; and
 - (iv) approval of the applicant is not against the public interest,

it may approve the applicant as an approved investment manager.

(2) If the Commission approves an applicant as an approved investment manager under subregulation (1), it shall—

- (a) register the applicant in the register of approved investment managers maintained under regulation 18; and

(b) issue the applicant with a certificate of approval as an approved investment manager in the approved form.

(3) If the Commission, in dealing with an application, forms the view that—

(a) the applicant is not fit and proper or, if approved, will not be in compliance with these Regulations;

(b) the application is incomplete in a material particular; or

(c) it is not in the public interest to approve the application,

it may deny the application for approval by issuing a notice of such denial to the applicant.

(4) Where an application for approval is denied under subregulation (3), the Commission shall, in conveying its decision, provide the applicant with the Commission's reason for the decision.

(5) Where an applicant is denied approval under subregulation (3), he or she shall, if he or she has been carrying on relevant business pursuant to regulation 4(3), cease carrying on such relevant business immediately.

(6) For the purposes of subregulation (3)(b), the question as to whether or not an application is incomplete in a material particular shall be determined by the Commission.

Effect of approval

8. (1) An approved investment manager shall—

(a) be treated as if he or she were a licensee for the purposes of the Financial Services Commission Act; and

(b) be liable to the powers exercisable by the Commission under that Act in relation to licensees.

(2) Where an applicant is approved by the Commission as an approved investment manager, he or she may carry out any of the relevant business outlined in regulation 9.

Functions that may be performed

9. (1) An approved investment manager may carry out any of the following investment business functions—

(a) act as an investment adviser or investment manager to a private fund or professional fund;

(b) act as an investment adviser or investment manager to a closed-ended fund that is incorporated as a company, formed as a partnership or organised as a trust, under the laws of the Virgin Islands or any recognised jurisdiction and has the characteristics of a private or professional fund; (*Amended by S.I. 88/2013*)

(c) act as an investment adviser or investment manager to a person who is affiliated to a fund structure falling within paragraphs (a) or (b);

(ca) act as an investment adviser or investment manager to any fund that is incorporated as a company, formed as a partnership or organised as a trust, under the laws of a recognised jurisdiction and has equivalent

characteristics to a private or professional fund; (*Inserted by S.I. 88/2013*)

- (d) act as an investment adviser or investment manager to such other person as the Commission may approve on a case by case basis upon application; and
- (e) act as an investment manager or investment adviser to a person that—
 - (i) is incorporated as a company, formed as a partnership or organised as a trust, outside the Virgin Islands in a non-recognised jurisdiction; (*Amended by S.I. 88/2013*)
 - (ii) has equivalent characteristics to a private fund, professional fund or a closed-ended fund; and
 - (iii) invests all or a substantial part of its assets in one or more fund structures falling within paragraph (a) or (b).

(1A) For the purposes of sub-regulation (1)(b) and (ca), a jurisdiction is a recognised jurisdiction if it is listed in the Securities and Investment Business (Recognised Jurisdictions) Notice, and sub-regulation (1)(e)(i) shall in that regard be construed accordingly. (*Inserted by S.I. 88/2013*)

(2) In determining, for the purposes of subregulation (1)(e)(iii), what constitutes a substantial part of a fund's assets in a fund falling within subregulation (1)(a) or (b), account shall be taken of whether the aggregate of the fund's investment in the funds falling within subregulation (1)(a) or (b) amounts to more than 50% of its total assets.

(3) The Commission, acting in accordance with section 41A of the Financial Services Commission Act, and after liaising with the Securities and Investment Business Advisory Committee, may issue guidelines to—

- (a) determine funds that may qualify to be treated as closed-ended funds;
- (b) determine the characteristics of a private or professional fund referred to in subregulation (1)(b);
- (c) determine a person who is affiliated to a fund structure referred to in subregulation (1)(c);
- (d) determine the equivalent characteristics of a person referred to in sub-regulation (1)(ca) and (e)(ii); (*Substituted by S.I. 88/2013*)
- (e) determine a non-Virgin Islands incorporated fund which is equivalent to a private fund or professional fund referred to in regulation 10(3)(b); and
- (f) provide or prescribe such other matter as is required to be provided or prescribed in guidelines.

Restrictions in relation to regulation 9

10. (1) For the purposes of regulation 9(1), an approved investment manager is not, unless otherwise required by the Commission, restricted as to the number of persons he or she may act for.

(2) An approved investment manager shall not, subject to subregulation (3), carry on any other business except the relevant business outlined in regulation 9(1).

(3) No person shall, unless he or she holds a licence under the Act or is otherwise approved by the Commission upon written application under these Regulations, act as an approved investment manager—

- (a) to a professional investor that does not fall within the scope of regulation 9(1); or
- (b) to a non-Virgin Islands incorporated fund which is equivalent to a private fund or professional fund, unless such fund falls under regulation 9(1).

Restrictions generally

11. (1) Where an approved investment manager ceases to qualify as such under these Regulations, he or she shall—

- (a) not take on any new relevant business; and
- (b) notify the Commission immediately that he or she is no longer qualified to act as an approved investment manager.

(2) Without prejudice to regulations 4(6), 6(4) and 17(1)(b), an approved investment manager who ceases to qualify as such under these Regulations—

- (a) has 3 months from the date of disqualification within which to cease carrying on relevant business; and
- (b) shall no longer be treated as a licensee as provided in regulation 8(1) after the expiry of the period specified in paragraph (a) or, if granted an extension under subregulation (4), within the specified extended period.

(3) A person who ceases to qualify as an approved investment manager may apply to the Commission to be licensed to carry on investment business under Part I of the Act.

(4) Where the Commission considers it appropriate to do so having regard to the business of the approved investment manager and such other matters as are considered relevant, the Commission may grant the approved investment manager a period of extension of not more than 3 months from the date of expiry of the initial 3 months to apply for and obtain a licence as mentioned in subregulation (3).

(5) Subregulation (2)(b) is without prejudice to any enforcement action that the Commission may take against an approved investment manager, whether in relation to a period before or after ceasing to act as an approved investment manager.

Restrictions in relation to assets under management

12. (1) Where an approved investment manager has—

- (a) in aggregate, assets under management exceeding \$400,000,000 or its equivalence in any other currency; or
- (b) in relation to a closed-ended fund, such other amount as may be prescribed in the guidelines issued under regulation 9(3),

he or she shall, within 7 days of exceeding that amount or the amount prescribed in relation to the closed-ended fund, notify the Commission in writing of that fact.

(2) Where an investment manager manages both an open-ended fund and a closed-ended fund, the aggregate assets under management in relation to the open-ended

fund and the amount prescribed for the closed-ended fund shall be segregated and treated separately for the purposes of subregulation (1).

(3) An approved investment manager who exceeds the amount prescribed in, or pursuant to, subregulation (1) shall cease to qualify as an approved investment manager unless, within 3 months of the date he or she ceased to qualify as an approved investment manager—

- (a) he or she no longer exceeds the amount prescribed in subregulation (1);
- (b) he or she submits an application to be licensed to carry on investment business under Part I of the Act; or
- (c) the Commission, having regard to any risk that may be associated with the approved investment manager or any of the persons for which he or she acts, approves in writing that he or she may continue to function as an approved investment manager.

(4) An approved investment manager who ceases to qualify as such by virtue of subregulation (3) and to whom paragraph (a), (b) or (c) of that subregulation does not apply may, within the period specified in that subregulation, continue to carry on relevant business but shall not take on any new relevant business.

(5) The Commission, acting in accordance with section 41A of the Financial Services Commission Act and after consultation with the Securities and Investment Business Advisory Committee, may issue guidelines in relation to subregulation (1) to—

- (a) determine the procedure for assessing assets under management; and
- (b) establish the types of asset that may constitute assets under management.

Ongoing obligations

13. (1) An approved investment manager shall at all times have—

- (a) at least 2 directors, one of whom shall be an individual; and
- (b) an authorised representative.

(2) An approved investment manager shall, within 14 days of the change of any information submitted pursuant to regulation 5, notify the Commission in writing of the change, providing details of the change and a written declaration in the prescribed form as to whether or not the change complies with the requirements of these Regulations.

(3) In addition to notifying the Commission of any change under subregulation (2), an approved investment manager shall notify the Commission of any matter in relation to the approved investment manager or in the approved investment manager's conduct of a relevant business, which has or is likely to have a material impact or a significant regulatory impact with respect to the approved investment manager or the relevant business.

Requirement re submission of financial statements

14. (1) Subject to subregulation (2), an approved investment manager is required to prepare and submit financial statements in accordance with the Act and shall, for that purpose, be treated as if he or she were a relevant licensee under Part IV of the Act.

(2) Sections 71(1)(b), 75, 76, 77, 78 and 79(2) of the Act are disapplied with respect to an approved investment manager, and the Regulatory Code and paragraph

2(1)(e) of Schedule 5 of the Financial Services (Miscellaneous Exemptions) Regulations are modified accordingly.

(3) The definition of “financial statements” in section 69 of the Act shall be construed to apply to the use of that term in subregulation (1).

Requirement re compliance officer, etc.

15. An approved investment manager is exempt from the requirement to appoint a compliance officer and establish and maintain a compliance procedures manual under section 34 Financial Services Commission Act and paragraph 2(1)(b) of Schedule 1 of the Financial Services (Miscellaneous Exemptions) Regulations is modified accordingly.

Filing annual returns

16. (1) An approved investment manager shall, no later than the 31st day of January of each year, file with the Commission a return in the prescribed form—

- (a) stating that he or she is not in breach of the requirements of these Regulations that entitle him or her to continue as an approved investment manager;
- (b) confirming that each director and senior officer of, and shareholder with a significant interest in, the approved investment manager is fit and proper; and
- (c) providing, as at the 31st day of December of the preceding year, details of—
 - (i) the persons for which he or she provides services;
 - (ii) the assets under management of each person for which he or she acts;
 - (iii) the number of investors in each person for which he or she acts; and
 - (iv) any significant complaints received by the approved investment manager.

(2) Where the Commission is required or considers it necessary to comply with any reporting obligation, whether under an enactment or otherwise, it may require an investment manager to provide the Commission with such further information as the Commission may consider fit.

(3) Any information required by the Commission under subregulation (2) shall be in such form and provided within such period as the Commission may determine.

(4) For the purposes of subregulation (1)(c)(iv), what constitutes a significant complaint shall be construed in accordance with section 69B of the Regulatory Code.

Public interest

17. (1) Where the Commission considers it to be in the public interest to do so, it may at any time, by written notice, require an approved investment manager to—

- (a) apply for and obtain a licence to carry on investment business under Part I of the Act; or
- (b) cease performing any or all of the relevant business outlined in regulation 9.

- (2) An approved investment manager—
- (a) has, in the case of a notice under subregulation (1)(a), 3 months from the date of the notice to apply for a licence to carry on investment business under Part I of the Act; and
 - (b) shall, in the case of a notice under subregulation (1)(b), cease carrying on the relevant business outlined in the notice immediately and shall—
 - (i) no longer be treated as a licensee as provided in regulation 8(1); and
 - (ii) cease to act as an approved investment manager immediately and not take on any new relevant business.

(3) Where, in the case of a notice under subregulation (1)(a), the Commission considers it appropriate to do so having regard to the business of the approved investment manager and such other matters as are considered relevant, the Commission may grant the approved investment manager a period of extension of not more than 3 months from the date of expiry of the initial 3 month period specified in subregulation (2)(a) to apply for and obtain a licence to carry on investment business under Part I of the Act.

(4) Where an approved investment manager to whom a notice has been issued under subregulation (1)(a) fails to apply for a licence within the period specified under subregulation (2) or, if granted an extension, within the specified extended period under subregulation (3), he or she shall—

- (a) no longer be treated as a licensee as provided in regulation 8(1); and
- (b) cease to act as an approved investment manager immediately and not carry on any relevant business.

(5) Subregulation (4)(a) is without prejudice to any enforcement action that the Commission may take against an approved investment manager, whether in relation to a period before or after ceasing to act as an approved investment manager.

Register of approved investment managers

18. (1) The Commission shall keep and maintain a register of approved investment managers under these Regulations.

- (2) The register kept and maintained under subregulation (1)—
- (a) may be in such form and published in such manner and for such period as the Commission considers fit; and
 - (b) shall be open to the public for inspection, and any person may request and obtain an extract from the register.
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INVESTMENT BUSINESS (REGISTERS) REGULATIONS – SECTION 21

(S.I. 85/2014)

Commencement

[3 November 2014]

Citation

1. These Regulations may be cited as the Investment Business (Registers) Regulations.

Contents of registers maintained under the Act

2. For the purposes of—

(a) section 99(1)(a) of the Securities and Investment Business Act (hereinafter referred to as "the Act"), the Register of Investment Business Licensees shall contain the following information—

- (i) the address of the place of business and address for service in the Virgin Islands of the licensee;
- (ii) the address of the place of business that the licensee may have outside the Virgin Islands;
- (iii) the full name and address of the licensee's authorised representative;
- (iv) the type and category of licence granted to the licensee, and the date on which it was granted;
- (v) the current status of the licensee, including the date of cancellation, suspension or revocation of licence, if licence has been cancelled, suspended or revoked; and
- (vi) whether fees payable for the current year have been paid and the date on which they were paid.

(b) section 99(1)(e) of the Act, the Register of Certified Authorised Representatives shall contain the following information—

- (i) the address of the place of business and address for service in the Virgin Islands of the certified authorised representative;
- (ii) the address of the place of business that the certified authorised representative may have outside the Virgin Islands;
- (iii) the date on which certification was granted to act as a certified authorised representative;
- (iv) the current status of the certified authorised representative, including the date on which certification was cancelled, suspended or revoked, if certification has been cancelled, suspended or revoked; and
- (v) whether fees payable for the current year have been paid and the date on which they were paid.

Contents of register maintained under S.I. No. 54 of 2012

3. The Register required to be maintained in respect of an approved investment manager under Regulation 18 of the Investment Business (Approved Managers) Regulations shall contain the following information—

- (a) the address of the place of business and address for service in the Virgin Islands of the approved investment manager;
 - (b) the address of the place of business that the approved investment manager may have outside the Virgin Islands;
 - (c) the full name and address of the approved investment manager's authorised representative;
 - (d) the date on which approval to act as an approved investment manager was granted;
 - (e) the current status of the approved investment manager, including the date on which approval was cancelled, suspended or revoked, if approval has been cancelled, suspended or revoked; and
 - (f) whether fees payable for the current year have been paid and the date on which they were paid.
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MUTUAL FUNDS REGULATIONS

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MUTUAL FUNDS REGULATIONS – SECTION 62

(S.I.s 18/2010, 41/2010 and 82/2019)

Commencement

[17 May 2010]

PRELIMINARY PROVISIONS

Short title

1. These Regulations may be cited as the Mutual Funds Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act;

“Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act; and

“fund property”, in relation to a private or professional fund, means—

- (a) where the fund is a BVI business company or a partnership, the assets of the fund; and
- (b) where the fund is a unit trust, the assets subject to the trust deed that constitutes the fund;
(Inserted by S.I. 82/2019)

“offering document” means a document that contains an invitation or offer to investors or potential investors to purchase or subscribe for fund interests in a private or professional fund, and includes an amended offering document.

Fund administration services

3. For the purposes of the definition of “fund administrator” in section 40(1) of the Act, “fund administration services” includes the following activities—

- (a) acting as registrar or transfer agent with respect to mutual funds; and
- (b) providing accounting services for, or with respect to, mutual funds, excluding the provision of audit and related services.

PART I

PRIVATE AND PROFESSIONAL FUNDS

Application for Recognition

Application for recognition as private or professional fund

4. (1) An application to the Commission for the recognition of a private or professional fund shall be in the approved form and shall specify the following—

- (a) the address of the fund's place of business in the Virgin Islands;
 - (b) the name and address of each of the fund's directors;
 - (c) the name and address of the fund's authorised representative;
 - (d) if the fund is a unit trust, the name and address of the trustee;
 - (e) the address of any place or places of business that the fund may have outside the Virgin Islands;
 - (f) the name and address of the fund's auditor;
 - (g) the name and address of each of the fund's functionaries;
 - (h) whether the fund has issued, or intends to issue, an offering document;
 - (i) in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands, written details of the nature and scope of the fund's business; and
 - (j) such other information as may be required by the approved form.
- (2) An application under subregulation (1) shall be accompanied by the following—
- (a) a copy of the fund's constitutional documents;
 - (b) a copy of the fund's certificate of incorporation, formation or registration or equivalent document, if any;
 - (c) if application is made to exempt the fund from the requirement to appoint a custodian, an explanation as to—
 - (i) why it is not considered necessary for a custodian to be appointed; and
 - (ii) the arrangements made, or to be made, to ensure the safe custody of the fund property;
 - (d) if application is made to exempt the fund from the requirement to appoint a manager, notification of the person who will fulfil the management function together with an explanation as to the arrangements made, or to be made, to ensure that the management function is adequately fulfilled;
 - (e) if the mutual fund has issued, or intends to issue, an offering document, a copy of the offering document or the proposed offering document; *(Amended by S.I. 82/2019)*
 - (f) if the mutual fund has not issued and does not intend to issue an offering document, an explanation as to why no offering document is to be issued including, in particular, how relevant information concerning the fund and any invitation or offer will be provided to investors and potential investors; and *(Amended by S.I. 82/2019)*
 - (g) a copy of the fund's valuation policy. *(Inserted by S.I. 82/2019)*
- (3) The Commission may require any documents submitted under subregulation (2)(a) and (b) to be certified in such manner as it considers appropriate.

Matters required to be prescribed, professional investor and professional fund

5. (1) For the purposes of the definition of “professional investor” in section 40(1) of the Act the specified sum is \$1,000,000.

(2) For the purposes of section 55(2)(c) of the Act, the minimum initial investment of each investor, other than an exempted investor, in a professional fund is \$100,000 or its equivalent in another currency.

(3) For the purposes of section 55(4) of the Act, the following are exempted investors with respect to a fund—

- (a) the manager, administrator, promoter or underwriter of the fund;
- (b) any employee of the manager or promoter of the fund; and
- (c) such other class or description of persons as the Commission may, by notice published in the *Gazette*, specify as exempted investors.

Obligations on Private and Professional Funds

Directors

6. (1) A private fund and a professional fund shall at all times have at least 2 directors, at least one of whom shall be an individual.

(2) Where a private or professional fund is in breach of subregulation (1), it shall immediately notify the Commission of that fact in writing.

Functionaries of private and professional funds

7. (1) Subject to subsection (2), a private fund and a professional fund shall at all times have—

- (a) a fund manager;
- (b) a fund administrator; and
- (c) a custodian.

(2) The Commission may, on written application made by or on behalf of a private or professional fund, exempt the fund from the requirement to appoint a custodian or a fund manager.

(3) An application under subregulation (2) may be made together with the application for recognition or at any subsequent time.

(4) The custodian of a private or professional fund shall—

- (a) be a person who is functionally independent from the fund manager and the fund administrator; or
- (b) where the custodian is the same person as the fund manager or fund administrator, be a company having systems and controls that ensure that the persons fulfilling the custodial function are functionally independent from the persons fulfilling the fund management or fund administration functions.

(5) Subject to subregulation (6), no person shall be appointed as a functionary of a private or professional fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.

(6) The Commission may agree to accept a shorter period of notice than that specified in subregulation (5).

Functionary ceasing to hold office

8. (1) Written notice shall be given to the Commission by a private or professional fund within—

- (a) 7 days after a functionary of the fund resigns, his or her appointment is terminated or he or she otherwise ceases to act as functionary of the fund; or
- (b) such longer period as the Commission may specify.

(2) The notice provided under subregulation (1) shall include a statement of the reason for the person ceasing to act as functionary of the fund and a written notice shall be deemed not to be provided under that subregulation if it does not include such a statement.

(3) Where a functionary of a private or professional fund resigns, has his or her appointment terminated or otherwise ceases to act as functionary of the fund, the fund does not contravene regulation 7(1) if another person is appointed to act as functionary within 7 days of the original functionary ceasing to act.

Investment warning

9. (1) No offer or invitation shall be made to an investor or potential investor to purchase or subscribe for fund interests in a private or professional fund unless the investor or potential investor is provided with an investment warning that complies with these Regulations.

(2) Where a private or professional fund issues an offering document, the investment warning shall be included in a prominent place in the offering document.

(3) Where a private or professional fund does not issue an offering document, the investment warning shall be provided to each investor as a separate document.

(4) The investment warning required to be provided to an investor or potential investor shall clearly indicate that the fund has been established as a private or professional fund, as the case may be, and that—

- (a) in the case of a private fund, the fund is suitable for private investors only and that the fund is limited to 50 investors or any invitation to subscribe for fund interests may be made on a private basis only;
- (b) in the case of a professional fund—
 - (i) the fund is only suitable for professional investors, as defined in the Act; and
 - (ii) a minimum initial investment of \$100,000 (or such larger sum as may apply with respect to the fund) is required; (*Amended by S.I. 41/2010*)
- (c) the fund is not subject to supervision by the Commission or by a regulator outside the Virgin Islands and that requirements considered

necessary for the protection of investors that apply to public funds do not apply to private or professional funds;

- (d) an investor in a private or professional fund is solely responsible for determining whether the fund is suitable for his or her investment needs;
- (e) by reason of the above, investment in a private or professional fund may present a greater risk to an investor than investment in a public fund.

Valuation of fund property

9A. (1) A private or professional fund shall maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented.

(2) A private or professional fund shall ensure that its administrator or such other person having responsibility for the valuation of fund property, values fund property in accordance with the valuation policy.

(3) The valuation policy and procedures of a private or professional fund shall—

- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
- (b) be consistent with the provisions concerning valuation contained in its constitutional documents and offering document;
- (c) require valuations to be undertaken at least on an annual basis;
- (d) include procedures for preparing reports on the valuation of fund property; and
- (e) specify the mechanisms in place for disseminating valuation information and reports to investors.

(4) Subject to sub-regulation (5), a private or professional fund shall ensure that the fund's manager, or such other person having responsibility for the investment function, is independent from the fund's administrator, or such other person having responsibility for the valuation process.

(5) Where a private or professional fund determines that the fund's manager, or such other person having responsibility for the investment function, must be the same as the administrator or such other person having responsibility for the valuation of fund property, the private or professional fund shall—

- (a) identify, manage and monitor any potential conflicts of interest that may arise; and
- (b) disclose to investors in the fund—
 - (i) that the fund's manager or such other person having responsibility for the investment function is the same as the fund's administrator or such other person having responsibility for the valuation function; and
 - (ii) details of how any potential conflicts of interest will be managed.

(Inserted by S.I. 82/2019)

*Financial Statement and Audit***Preparation and audit of financial statements**

10. (1) Subject to subregulation (2), a private fund and a professional fund shall—
- (a) prepare financial statements for each financial year that comply with—
 - (i) one of the accounting standards specified with respect to public funds in regulation 17(1)(a) to (d); or
 - (ii) internationally recognised and generally accepted accounting standards equivalent to the accounting standards referred to in subparagraph (i); and
 - (b) appoint, and at all times have, an auditor for the purposes of auditing its financial statements.
- (2) The Commission may, on written application made by or on behalf of a private or professional fund, exempt the fund from the requirement to appoint an auditor.
- (3) The auditor of a private or professional fund shall—
- (a) audit the fund's financial statements and prepare his or her report in accordance with—
 - (i) US Generally Accepted Auditing Standards;
 - (ii) International Standards on Auditing (UK);
 - (iii) International Standards on Auditing;
 - (iv) Hong Kong Standards on Auditing;
 - (v) Canadian Auditing Standards; or
 - (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
(Substituted by S.I. 82/2019)
 - (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;
 - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
 - (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.
- (4) A private or professional fund shall provide a copy of its audited financial statements to the Commission within 6 months after the financial year end for the financial statements or such extended period not exceeding 15 months as, subject to subsection (5), the Commission may approve in writing.
- (5) The Commission shall not grant an extension under subregulation (4) of more than 9 months unless it is satisfied that a further extension is justified by exceptional circumstances.

Notifications

11. (1) A private fund and a professional fund shall provide written notice to the Commission in accordance with this regulation of—

- (a) the appointment of a director, authorised representative or auditor;
 - (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
 - (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
 - (d) any material change in the nature and scope of the fund's business, in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands;
 - (e) any amendment to its constitutional documents;
 - (f) the issuance of an offering document that was not provided to the Commission with the fund's application for recognition; (*Amended by S.I. 82/2019*)
 - (g) the amendment of any offering document previously provided to the Commission, whether with its application or in accordance with paragraph (f); and (*Amended by S.I. 82/2019*)
 - (h) any amendment to the fund's valuation policy. (*Inserted by S.I. 82/2019*)
- (2) Notification of the matters specified in subregulation (1) shall be provided as follows—
- (a) in the case of a notice provided in accordance with subregulation (1)(a), (b) or (c), within 14 days after the date of the occurrence of the matter to be notified;
 - (b) in the case of a notice provided in accordance with subregulation (1)(d), as soon as reasonably practicable after the change;
 - (c) in the case of a notice provided in accordance with sub-regulation (1)(e), (f), (g) or (h), no more than 14 days after the occurrence of the matter in respect of which notice is given. (*Substituted by S.I. 82/2019*)

PART II

PUBLIC FUNDS

Registration

Application for registration of public fund

12. (1) An application to the Commission for the registration of a public fund shall be in the approved form and shall specify the following—

- (a) the address of the place of business of the fund in the Virgin Islands;
- (b) the name and address of the fund's authorised representative;
- (c) if the fund is a BVI business company, the name and address of the fund's directors;
- (d) if the fund is a unit trust, the name and address of the trustee;
- (e) the name and address of any promoters of the fund;

- (f) the address of any place or places of business that the fund may have outside the Virgin Islands;
 - (g) the name and address of the fund's auditor;
 - (h) the name and address of each of the fund's functionaries;
 - (i) the place or places where the fund's financial and other records will be kept; and
 - (j) such other information as may be required by the approved form.
- (2) An application for the registration of a public fund shall be accompanied by the following—
- (a) a copy of the fund's constitutional documents;
 - (b) a copy of the fund's certificate of incorporation, formation or registration or equivalent document, if any;
 - (c) a statement setting out the nature and scope of the business to be carried on by the fund in or from within the Virgin Islands, including the name of any other country where the fund is carrying on or intends to carry on business;
 - (d) if application is made to exempt the fund from the requirement to appoint a custodian, an explanation as to—
 - (i) why it is not considered necessary for a custodian to be appointed; and
 - (ii) the arrangements made, or to be made, to ensure the safe custody of the fund property;
 - (e) a copy of the prospectus issued or proposed to be issued by or on behalf of the fund; and
 - (f) a copy of each functionary agreement.
- (3) The Commission may require any documents submitted under subregulation (2)(a) or (b) to be certified in such manner as it considers appropriate.

Prospectus

Content of prospectus of public fund

13. A prospectus issued by a public fund shall—

- (a) state prominently at the head of the first page or on the cover that it is a prospectus prepared in accordance with the Act, these Regulations and the Public Funds Code;
- (b) contain the information specified in the Public Funds Code;
- (c) be accompanied by, or contain reference to, the availability of the financial statements for the last financial year of the fund and the auditor's report on those accounts, if the fund has completed a financial year in operation;

- (d) be accompanied by such other documents as may be specified in the Public Funds Code; and
- (e) contain such other matters as the Commission may require.

Other Requirements

Directors

14. (1) A public fund that is a BVI business company shall at all times have at least 2 directors.
- (2) Only an individual shall be appointed as the director of a public fund.
 - (3) Where a public fund is in breach of subregulation (1), it shall—
 - (a) immediately notify the Commission of that fact in writing; and
 - (b) within 21 days of the breach, submit an application to the Commission for the appointment of one or more new directors pursuant to section 54 of the Act in order to ensure compliance with subregulation (1).

Unit trust to have a trustee

15. A public fund that is a unit trust shall at all times have a trustee that is a body corporate.

Functionaries of public fund

16. (1) Subject to subregulation (2), a public fund shall at all times have—
- (a) a fund manager;
 - (b) a fund administrator; and
 - (c) a custodian.
- (2) The Commission may, on written application made by or on behalf of a public fund, exempt the fund from the requirement to appoint a custodian.
- (3) An application under subregulation (2) may be made together with the application for registration or at any subsequent time.
- (4) Each functionary of a public fund shall be functionally independent from every other functionary of the fund.

Prescribed accounting and audit standards

17. (1) The following accounting standards are specified for the purposes of Part IV of the Act in relation to public funds—
- (a) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board;
 - (b) UK GAAP;
 - (c) US GAAP;
 - (d) Canadian GAAP; or

- (e) such other recognised international accounting standards as may be approved by the Commission on a case by case basis.
- (2) The auditor of a public fund shall—
 - (a) audit the fund's financial statements and prepare his or her report in accordance with—
 - (i) US Generally Accepted Auditing Standards;
 - (ii) International Standards on Auditing (UK);
 - (iii) International Standards on Auditing;
 - (iv) Hong Kong Standards on Auditing;
 - (v) Canadian Auditing Standards; or
 - (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
(*Substituted by S.I. 82/2019*)
 - (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;
 - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
 - (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.

Notifications

18. (1) A public fund shall provide written notice to the Commission in accordance with this regulation of—

- (a) the appointment of a director, authorised representative or auditor;
- (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
- (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
- (d) any change in the place or places where the fund's financial and other records are kept;
- (e) any material change in the nature and scope of the fund's business, in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands;
- (f) any proposed amendment to its constitutional documents;
- (g) its intention to issue an offering document not provided to the Commission with the funds application for registration; and
- (h) its intention to amend any offering document provided to the Commission with its application or in accordance with paragraph (g).

(2) Notification of the matters specified in subregulation (1) shall be provided as follows—

- (a) in the case of a notice provided in accordance with subregulation (1)(a), (b), (c) or (d), within 14 days after the date of the occurrence of the matter to be notified;
- (b) in the case of a notice provided in accordance with subregulation (1)(e), as soon as reasonably practicable after the change;
- (c) in the case of a notice provided in accordance with subregulation (1)(f), (g) or (h), no less than 21 days prior to the issue of the proposed offering document or the proposed amendment, as the case may be, or such shorter period as the Commission may approve in writing.

Public Funds Code

19. The following matters may be provided for in the Public Funds Code—

- (a) the management, control and administration of public funds, the persons who may be appointed as functionaries of a public fund and the duties of those functionaries;
- (b) the custodial arrangements to be put in place with respect to public funds;
- (c) the reporting of information and the submission of documents to the Commission, including periodic returns, and the verification of the information or documents, and returns to be submitted to the Commission by and in respect of public funds;
- (d) the issue and redemption of fund interests in public funds;
- (e) the rights of investors in public funds;
- (f) conflicts of interests;
- (g) title to, and the transfer of, public fund property;
- (h) segregation of assets;
- (i) the income of a public fund;
- (j) meetings of investors of public funds;
- (k) the retention of records by public funds and the functionaries of public funds;
- (l) requirements and restrictions with respect to—
 - (i) the constitutional documents of a public fund;
 - (ii) investments and borrowing;
 - (iii) pricing and dealing;
 - (iv) the suspension and termination by a public fund of its operation or business;
 - (v) the valuation of assets and liabilities of a public fund; and
 - (vi) payments made, and benefits provided, to the functionaries of a public fund.

PART III

MISCELLANEOUS PROVISIONS

Registers

20. (1) The Registers maintained by the Commission and the information contained in any document filed may be kept in such manner as the Commission considers fit including, either wholly or partly, by means of a device or facility—

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(2) The registers required to be maintained under the Act shall—

- (a) specify the following information with respect to each fund—
 - (i) the address of the place of business and address for service in the Virgin Islands of the person who applied for registration or recognition (“the applicant”);
 - (ii) the applicant’s authorised representative;
 - (iii) the address of the place of business that the applicant may have outside the Virgin Islands;
 - (iv) the date of registration or recognition of the fund;
 - (v) the status of the registration or recognition, if cancelled, and the date of cancellation;
 - (vi) whether fees payable by the fund for the current year have been paid and the date on which they were paid; and
 - (vii) such other information as the Commission considers to be appropriate; and
- (b) be open to public inspection.

Transitional provisions

21. The transitional provisions specified in the Schedule shall have effect.

SCHEDULE

(Regulation 21)

TRANSITIONAL PROVISIONS**Interpretation**

1. In this Schedule—

“commencement date” means the date the Act is brought into force;

“existing private fund” means a mutual fund that, immediately before the commencement date, was recognised as a private fund under the former Act;

“existing professional fund” means a mutual fund that, immediately before the commencement date, was recognised as a professional fund under the former Act;

“existing public fund” means a mutual fund that, immediately before the commencement date, was registered as a public fund under the former Act;

“first transition date” means 31 December, 2010;

“former Act” means the Mutual Funds Act, 1996 repealed under the Act;

“second transition date” means the date the Public Funds Code comes into effect; and

“transitioning mutual fund” means a person who, immediately prior to the coming into force of the Mutual Funds (Amendment) Regulations, 2019, was recognised as a private or professional fund or registered as a public fund under the Act.

(Amended by S.I. 41/2010)

Private and Professional Funds

2. The following provisions of these Regulations shall not take effect until the first transition date with respect to an existing private or professional fund:

- (a) regulation 6;
- (b) regulation 7 (1) and (4); and
- (c) regulation 9.

Financial statements and audit re private and professional funds

3. (1) For the purposes of this regulation, “current financial year”, in relation to an existing private or professional fund, means the financial year of the fund that commenced before, and ends after, the commencement date.

(2) Regulation 10(1) and (4) do not have effect with respect to the current financial year of an existing private or professional fund, or any financial statements prepared in respect of the current financial year.

(3) Regulation 10(3) does not have effect in relation to the auditor of an existing private or professional fund appointed in respect of the current financial year.

Public funds

4. The following provisions of these Regulations shall not take effect until the first transition date with respect to an existing public fund:

- (a) regulation 14;
- (b) regulation 16 (1) and (4); and
- (b) subject to paragraph 6 (2), regulation 17.

Prospectus of public fund

5. Regulation 13 shall not take effect until the second transition date.

Audit of financial statements re public funds

6. (1) For the purposes of this regulation, “current financial year”, in relation to an existing public fund, means the financial year of the fund that commenced before, and ends after, the commencement date.

(2) Regulation 17(2) does not have effect in relation to the auditor of an existing public fund appointed in respect of the current financial year.

Effective Date

7. The provisions of the Mutual Funds (Amendment) Regulations, 2019 shall take effect in relation to a transitioning mutual fund on 1st July 2020.

(Inserted by S.I. 82/2019)

MUTUAL FUNDS (FOREIGN FUNDS) REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

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2. Interpretation
3. Fund administration services

PART I

RECOGNISED FOREIGN FUNDS

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4. Application for recognition as a foreign fund

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5. Prospectus

Obligations on recognised foreign funds

6. Directors
7. Functionaries of recognised foreign funds
8. Functionary ceasing to hold office
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Financial statements and audit

10. Preparation and audit of financial statements
11. Status with Regulatory Authority
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PART II

MISCELLANEOUS PROVISIONS

13. Register
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SCHEDULE

MUTUAL FUNDS (FOREIGN FUNDS) REGULATIONS – SECTION 62

(S.I. 81/2019)

Commencement

[31 December 2019]

PRELIMINARY PROVISIONS

Citation

1. These Regulations may be cited as the Mutual Funds (Foreign Funds) Regulations.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act; “Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act;

“Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act;

“regulatory status”, in relation to a recognised foreign fund, means the type of authorisation granted to a recognised foreign fund by a Regulatory Authority in the jurisdiction where the recognised foreign fund is constituted; and

“Regulatory Authority” means an authority that is responsible for the authorisation and supervision of a foreign fund in the jurisdiction in which the recognised foreign fund is constituted;

Fund administration services

3. For the purposes of the definition of “fund administrator” in section 40(1) of the Act, “fund administration services” includes the following activities—

- (a) acting as registrar or transfer agent with respect to mutual funds; and
- (b) providing accounting services for, or with respect to, mutual funds, excluding the provision of audit and related services.

PART I

RECOGNISED FOREIGN FUNDS

Application for recognition

Application for recognition as foreign fund

4. (1) An application to the Commission for the recognition of a foreign fund shall be in the approved form and shall specify the following—

- (a) the address of the fund’s place of business in the Virgin Islands;
- (b) the regulatory status of the fund;

- (c) the name and address of the fund's Regulatory Authority;
 - (d) the name and address of the fund's authorised representative;
 - (e) the name, address and details of each of the fund's directors;
 - (f) if the fund is a unit trust, the name, address and details of the trustee;
 - (g) if the fund is a limited partnership, the name, address and details of the general partners;
 - (h) the name, address and details of each of the fund's functionaries;
 - (i) the name and address of the fund's auditor;
 - (j) the place or places where the fund's financial and other records will be kept;
 - (k) the name and address of persons in the Virgin Islands that will be responsible for promoting and selling shares in the fund; and
 - (l) such other information as may be required by the approved form.
- (2) An application under sub-regulation (1) shall be accompanied by the following—
- (a) a copy of the fund's constitutional documents;
 - (b) a copy of the fund's certificate of incorporation, formation or registration or equivalent document, if any;
 - (c) evidence of the fund's regulatory status;
 - (d) a copy of the fund's issued or proposed prospectus; and
 - (e) a copy of the fund's valuation policy.
- (3) The Commission may require any documents submitted under sub-regulation (2)(a) and (b) to be certified in such manner as it considers appropriate.

Prospectus

Prospectus

5. (1) For the purposes of this section, a prospectus issued by a recognised foreign fund shall comply with the requirements of the Public Funds Code, as if the recognised foreign fund was registered as a public fund under the Act.
- (2) A prospectus issued by a recognised foreign fund shall—
- (a) state prominently at the head of the first page or on the cover, that it is prepared in accordance with the Act, these Regulations and the Public Funds Code;
 - (b) be accompanied by, or contain reference to, the availability of financial statements for the last financial year of the fund and the auditor's report on those accounts, if the fund has completed a financial year in operation;
 - (c) be accompanied by such other documents as may be prescribed in the Public Funds Code; and
 - (d) contain such other matters as the Commission may require.

(3) Subject to sub-regulations (4) and (5), a recognised foreign fund shall not issue a prospectus or amended prospectus unless it has given the Commission at least 7 days prior notification of the intended issuance.

(4) A notification under sub-regulation (3) shall include submission of the copy of the prospectus or amended prospectus to be issued by the recognised foreign fund.

(5) The Commission may agree to accept a shorter notification period than that specified in sub-regulation (3).

Obligations on recognised foreign funds

Directors

6. (1) A recognised foreign fund shall at all times have not less than 2 directors, at least one of whom shall be an individual.

(2) Where a recognised foreign fund is in breach of sub-regulation (1), it shall notify the Commission of that fact within 7 days after the breach occurred.

(3) Subject to sub-regulation (4), no person shall be appointed as a director of a recognised foreign fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.

(4) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (3).

Functions of recognised foreign funds

7. (1) Subject to sub-regulation (2), a recognised foreign fund shall at all times have—

- (a) a fund manager;
- (b) a fund administrator; and
- (c) a custodian.

(2) The Commission may, on written application made by or on behalf of a recognised foreign fund, exempt the fund from the requirement to appoint a custodian.

(3) An application under sub-regulation (2) may be made together with the application for recognition or at any subsequent time.

(4) The custodian of a recognised foreign fund shall—

- (a) be a person who is functionally independent from the fund manager and the fund administrator; or
- (b) where the custodian is the same person as the fund manager or fund administrator, be a company having systems and controls that ensure that the persons fulfilling the custodial function are functionally independent from the persons fulfilling the fund management or fund administration functions.

(5) Subject to sub-regulation (6), no person shall be appointed as a functionary of a recognised foreign fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.

(6) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (5).

Functionary ceasing to hold office

8. (1) A recognised foreign fund shall give written notice to the Commission within 7 days, or such other period as the Commission may specify, after a functionary of the fund—

- (a) resigns;
- (b) has his or her appointment terminated; or
- (c) otherwise ceases to act as a functionary of the fund.

(2) The notice provided under sub-regulation (1) shall include a statement of the reason for the person ceasing to act as functionary of the fund and a written notice shall be deemed not to be provided under that sub-regulation if it does not include such a statement.

(3) Where a functionary of a recognised foreign fund ceases to hold office on any of the grounds specified in sub-regulation (1), the fund does not contravene regulation 7(1) if another person is appointed to act as functionary within 14 days of the original functionary ceasing to act.

Valuation fund property

9. (1) A recognised foreign fund shall maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented.

(2) A recognised foreign fund shall ensure that its administrator or such other person having responsibility for the valuation of fund property, values fund property in accordance with the valuation policy.

(3) The valuation policy and procedures of a recognised foreign fund shall—

- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
- (b) be consistent with the provisions concerning valuation in its constitutional documents and prospectus;
- (c) require valuations to be undertaken on at least an annual basis;
- (d) include procedures for preparing reports on the valuation of fund property; and
- (e) specify the mechanisms in place for disseminating valuation information and reports to investors.

(4) Subject to sub-regulation (5), a recognised foreign fund shall ensure that the persons controlling the fund's manager, or such other person having responsibility for the investment function, are independent from the persons controlling the fund's administrator, or such other person having responsibility for the valuation process.

(5) Where a recognised foreign fund determines that the fund's manager, or such other person having responsibility for the investment function must have an involvement in the valuation of fund property, the recognised foreign fund shall—

- (a) identify, manage and monitor any potential conflicts of interest that may arise; and
- (b) disclose to investors in the fund—
 - (i) that the fund's manager or such other person having responsibility for the investment function has an involvement in the valuation of fund property; and
 - (ii) details of how any potential conflicts of interest will be managed.

Financial statements and audit

Preparation and audit of financial statements

10. (1) A recognised foreign fund shall prepare financial statements that comply with—

- (a) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board;
- (b) UK GAAP;
- (c) US GAAP;
- (d) Canadian GAAP; or
- (e) such other internationally recognised and generally accepted accounting standards equivalent to the accounting standards referred to in subparagraphs (a) to (d).

(2) A recognised foreign fund shall appoint, and at all times have, an auditor for the purposes of auditing its financial statements.

(3) Subject to sub-regulation (4), no person shall be appointed as an auditor of a recognised foreign fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.

(4) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (3).

(5) The auditor of a recognised foreign fund shall—

- (a) audit the fund's financial statements and prepare his or her report in accordance with—
 - (i) US Generally Accepted Auditing Standards;
 - (ii) International Standards on Auditing (UK);
 - (iii) International Standards on Auditing;
 - (iv) Hong Kong Standards on Auditing;
 - (v) Canadian Auditing Standards; or
 - (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
- (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;

- (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
- (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.

(6) A recognised foreign fund shall provide a copy of its audited financial statements to the Commission within 6 months after the financial year end to which the financial statements relate or, subject to sub-regulation (7), such extended period not exceeding, in aggregate, 15 months as the Commission may approve in writing.

(7) The Commission shall not grant an extension under sub-regulation (6) of more than 9 months unless it is satisfied that a further extension is justified by exceptional circumstances.

Other requirements

Status with Regulatory Authority

11. Where a recognised foreign fund ceases to be regulated by its Regulatory Authority, it shall, within 5 days after the occurrence—

- (a) provide written notification to the Commission, of the reason it is no longer regulated by its Regulatory Authority; and
- (b) cease to offer shares of the fund in the Virgin Islands.

Notifications

12. (1) A recognised foreign fund shall provide written notice to the Commission in accordance with this regulation of—

- (a) the appointment of an authorised representative or auditor;
- (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
- (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
- (d) any change in the place or places where the fund's financial and other records are kept;
- (e) any proposed amendment to its constitutional documents;
- (f) any proposed amendment to its valuation policy; and
- (g) any enforcement action against the fund by its Regulatory Authority or any other regulator outside the Virgin Islands.

(2) Notification of the matters specified in sub-regulation (1) shall be provided as follows—

- (a) in the case of a notice provided in accordance with sub-regulation (1)(a), (b), (c) or (d), within 14 days after the date of the occurrence of the matter to be notified, or such shorter period as the Commission may approve in writing;
- (b) in the case of a notice provided in accordance with sub-regulation (1)(e) or (f), no less than 7 days prior to the issue of the proposed

constitutional document, or the proposed valuation policy, as the case may be, or such shorter period as the Commission may approve in writing; and

- (c) in the case of a notice provided in accordance with sub- regulation (1)(g), within 5 days after the occurrence of the matter to be notified.

PART II

MISCELLANEOUS PROVISIONS

Register

13. (1) The Register maintained by the Commission and the information contained in any document filed may be kept in such manner as the Commission considers fit including, either wholly or partly, by means of a device or facility—

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(2) The register required to be maintained under the Act shall—

- (a) specify the following information with respect to each fund—
- (i) the address of the place of business and address for service in the Virgin Islands of the person who applied for recognition (“the applicant”);
- (ii) the applicant’s authorised representative;
- (iii) the address of the place of business that the applicant may have outside the Virgin Islands;
- (iv) the date of recognition of the fund;
- (v) the status of the recognition, if cancelled, and the date of cancellation;
- (vi) whether fees payable by the fund for the current year have been paid and the date on which they were paid; and
- (vii) such other information as the Commission considers to be appropriate.

Transitional provisions

14. The transitional provisions specified in the Schedule shall have effect.

SCHEDULE*(Regulation 14)***TRANSITIONAL PROVISIONS****Interpretation**

1. In this Schedule “existing foreign fund” means a mutual fund that, immediately before the coming into force of these Regulations, was recognised as a recognised foreign fund under the Act.

Effective Date

2. The provisions of these Regulations shall take effect in relation to an existing foreign fund on 1st July 2020.

PRIVATE INVESTMENT FUNDS REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation

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3. Application for recognition as private investment fund
4. Matters required to be prescribed
5. Directors
6. Appointed persons of private investment fund
7. Appointed person ceasing to hold office
8. Offering Document or Term Sheet

Valuation, Financial Statements and Audit

9. Valuation of fund property
10. Preparation and audit of financial statements
11. Notifications

Miscellaneous Provisions

12. Registers

PRIVATE INVESTMENT FUNDS REGULATIONS – SECTION 63A

(S.I. 80/2019)

Commencement

[31 December 2019]

Citation

1. These Regulations may be cited as the Private Investment Funds Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act;

“Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act;

“fund property”, in relation to a private investment fund, means—

- (a) where the fund is a BVI business company or a partnership, the assets of the fund; and
- (b) where the fund is a unit trust, the assets subject to the trust deed that constitutes the fund;

“offering document” or “term sheet” means a document that contains an invitation or offer to investors or potential investors to purchase or subscribe for fund interests in a private investment fund, and includes an amended offering document or term sheet.

Application for Recognition

Application for recognition as a private investment fund

3. (1) An application to the Commission for the recognition of a private investment fund shall be in the approved form and shall specify the following—

- (a) the address of the fund’s place of business in the Virgin Islands;
- (b) the name and address of each of the fund’s directors;
- (c) the name and address of the fund’s authorised representative;
- (d) if the fund is a unit trust, the name and address of the trustee;
- (e) if the fund is a limited partnership, the name and address of the general partners;
- (f) the address of any place or places of business that the fund may have outside the Virgin Islands;
- (g) the name and address of each appointed person; and
- (h) such other information as may be required by the approved form.

- (2) An application under sub-regulation (1) shall be accompanied by the following—

- (a) a copy of the fund’s constitutional documents;
- (b) a copy of the fund’s certificate of incorporation, formation, registration or equivalent document;
- (c) if the private investment fund has issued, or intends to issue an offering document or a term sheet, a copy of the offering or term sheet, or the proposed offering document or term sheet; and
- (d) a copy of the fund’s valuation policy.

(3) The Commission may require any documents submitted under sub-regulation (2)(a) and (b) to be certified in such manner as it considers appropriate.

Matters required to be prescribed

4. (1) For the purposes of the definition of “professional investor” in section 63A of the Act, the specified sum is \$1,000,000.

(2) For the purposes of section 63F(2)(b)(iii) of the Act, the minimum initial investment of each investor, other than an exempted investor or, in a private investment fund that is suitable for professional investors, is \$100,000 or its equivalent in another currency.

Directors

5. (1) A private investment fund shall at all times have not less than 2 directors, at least one of whom shall be an individual.

(2) Where a private investment fund is in breach of sub-regulation (1), it shall immediately notify the Commission of that fact within 7 days after the breach occurred.

Appointed persons of private investment funds

6. (1) A private investment fund shall at all times have a person (hereafter referred to as the “appointed person”) responsible for undertaking—

- (a) the management of fund property;
- (b) the valuation of fund property; and
- (c) the safekeeping of fund property, including the segregation of fund property.

(2) Subject to sub-regulations (3) and (4), an appointed person under sub-regulation (1) may be—

- (a) a person licensed by the Commission or a regulatory authority in a recognised jurisdiction to perform the specified functions;
- (b) an independent third party with experience in performing the specified functions; or
- (c) a director, partner or trustee of the private investment fund.

(3) Subject to sub-regulation (4), no person shall be appointed as an appointed person of a private investment fund unless the fund has provided the Commission with the proposed appointment at least 7 days prior to the appointment.

(4) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (3).

Appointed person ceasing to hold office

7. (1) A private investment fund shall give notice to the Commission within 7 days, or such other period as the Commission may specify, after an appointed person of the fund—

- (a) resigns;
- (b) has his or her appointment terminated; or
- (c) otherwise ceases to act as an appointed person to the fund.

(2) The notice provided under sub-regulation (1) shall include a statement of the reason for the appointed person ceasing to act as such, and a written notice shall be deemed not to be provided under that sub-regulation if it does not include such a statement.

(3) Where an appointed person of a private investment fund ceases to hold office on any of the grounds specified in sub-regulation (1), the fund does not contravene regulation 6(1) if another person is appointed to act as an appointed person within 7 days of the original appointed person ceasing to hold office.

Offering documents or term sheet

8. (1) Subject to sub-regulation (2), an offer or an invitation to an investor or a potential investor to purchase or subscribe for fund interests in a private investment, shall be made within an offering document or a term sheet.

(2) Where a private investment fund has not issued or does not intend to issue an offering document or a term sheet, it shall provide to the Commission, the reason for not issuing the offering document or term sheet including, in particular, how relevant information concerning the fund and any invitation or offer will be provided to investors or potential investors.

(3) An offering document or a term sheet shall clearly indicate that the fund is recognised by the Commission as a private investment fund and shall contain the following—

- (a) an indication as to whether—
 - (i) the fund is suitable for private investors only and that the fund is limited to 50 investors, or any invitation to subscribe for fund interests may be made on a private basis only;
 - (ii) the fund is only suitable for professional investors, as defined in the Act and the minimum investment of \$100,000 (or such larger sum as may apply with respect to the fund) is required;
- (b) the investment objective of the fund;
- (c) a written statement that investors do not have the right to redeem or withdraw fund interests on demand;
- (d) the names and addresses of the appointed persons responsible for the management, valuation and safekeeping of fund property; and
- (e) any fees to be paid by the fund.

*Valuation, Financial Statements and Audit***Valuation of fund property**

9. (1) A private investment fund shall maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented.

(2) A private investment fund shall ensure that the appointed person values fund property in accordance with the valuation policy.

(3) The valuation policy and procedures of a private investment fund shall—

- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
- (b) be consistent with the provisions concerning valuation contained in its constitutional documents and offering document or term sheet;
- (c) require valuations to be undertaken at least on an annual basis;
- (d) include procedures for preparing reports on the valuation of fund property; and
- (e) specify the mechanisms in place for disseminating valuation information and reports to investors.

(4) Subject to sub-regulation (5), a private investment fund shall ensure that the appointed person responsible for the fund's management function, is independent from the appointed person responsible for the valuation process.

(5) Where a private investment fund determines that the appointed person responsible for the fund's management function must be the same person as the appointed person responsible for the valuation of fund property, the private investment fund shall—

- (a) identify, manage and monitor any potential conflicts of interest that may arise; and
- (b) disclose to investors in the fund—
 - (i) that the appointed person responsible for the fund's management function is also the appointed person responsible for the valuation of fund property; and
 - (ii) details of how any potential conflicts of interest will be managed.

Preparation and audit of financial statements

10. (1) A private investment fund shall prepare financial statements that comply with—

- (a) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board;
- (b) UK GAAP;
- (c) US GAAP;
- (d) Canadian GAAP; or

- (e) such other internationally recognised and generally accepted accounting standards equivalent to the accounting standards referred to in subparagraphs (a) to (d).
- (2) The financial statements of a private investment fund shall—
 - (a) be audited by an auditor, who prepares his or her report in accordance with—
 - (i) US Generally Accepted Auditing Standards;
 - (ii) International Standards on Auditing (UK);
 - (iii) International Standards on Auditing;
 - (iv) Hong Kong Standards on Auditing;
 - (v) Canadian Auditing Standards; or
 - (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
 - (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;
 - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
 - (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.
- (3) A private investment fund shall provide a copy of its audited financial statements to the Commission within 6 months after the financial year end to which the financial statements relate or, subject to sub-regulation (4), such extended period not exceeding, in aggregate, 15 months as the Commission may approve in writing.
- (4) The Commission shall not grant an extension under sub-regulation (3) of more than 9 months unless it is satisfied that a further extension is justified by exceptional circumstances.

Notifications

- 11.** (1) A private investment fund shall provide written notice to the Commission, in accordance with these Regulations, of—
- (a) the appointment of a director, authorised representative or auditor;
 - (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
 - (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
 - (d) any material change in the nature and scope of the fund's business, in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands;
 - (e) any amendment to its constitutional documents;
 - (f) the issuance of an offering document or a term sheet that was not provided to the Commission with the fund's application for recognition;

- (g) the amendment of any offering document or term sheet previously provided to the Commission, whether with its application or in accordance with paragraph (f); and
 - (h) any amendment to the fund's valuation policy.
- (2) Notification of the matters specified in sub-regulation (1) shall be provided within 14 days after the occurrence of the matter in respect of which notice is given.

Miscellaneous Provisions

Registers

12. (1) The Registers maintained by the Commission and the information contained in any document filed may be kept and maintained in such manner as the Commission considers fit including, either wholly or partly, by means of a device or facility—

- (a) that records or stores information magnetically, electronically or by other means; and
 - (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.
- (2) The registers required to be maintained under the Act shall
- (a) specify the following information with respect to each fund—
 - (i) the address of the place of business and address for service in the Virgin Islands of the person who applied for recognition (“the applicant”);
 - (ii) the applicant's authorised representative;
 - (iii) the address of the place of business that the applicant may have outside the Virgin Islands;
 - (iv) the date of recognition of the fund;
 - (v) the status of the recognition, if cancelled, and the date of cancellation;
 - (vi) whether fees payable by the fund for the current year have been paid and the date on which they were paid; and
 - (vii) such other information as the Commission considers to be appropriate; and
 - (b) be open to public inspection.
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PUBLIC FUNDS CODE
ARRANGEMENT OF SECTIONS

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PUBLIC FUNDS CODE – SECTION 63

(S.I. 90/2010)

Commencement

[31 March 2011]

PRELIMINARY PROVISIONS

Citation

1. This Code may be cited as the Public Funds Code.

EXPLANATORY NOTES

Introduction

- (i) *Part III of the Securities and Investment Business Act [referred to in the Explanatory Notes as “SIBA”] establishes a mutual funds regime for the Virgin Islands [referred to in the Explanatory Notes as “the BVI”]. SIBA is supported by the Mutual Funds Regulations [referred to in the Explanatory Notes as the “MFR”]. Part 2 of the MFR, which applies to public funds, covers a number of key matters, including—*
 - (a) *the registration of public funds;*
 - (b) *prospectus requirements;*
 - (c) *certain requirements concerning directors and key functionaries;*
 - (d) *accounting and audit standards; and*
 - (e) *notification requirements.*
- (ii) *However, international standards relating to public funds cover other matters, many of which are technical, complex and detailed and not well suited to incorporation in either primary legislation, or regulations. Furthermore, it is important that the regulatory framework for public funds is able to readily evolve as international standards change and the funds sector in the BVI develops and matures. It is impracticable and undesirable for primary legislation to be changed frequently and, for these reasons, SIBA enables the Commission to issue a Public Funds Code [referred to in the Explanatory Notes as “the Code”], containing more detailed requirements that support the general framework for public funds established by SIBA and the MFR.*
- (iii) *SIBA [in section 63(1)(b)] enables the MFR to specify matters that may be contained in the Public Funds Code. Regulation 18 of the MFR provides that a number of matters relating to public funds may be contained in the Code, including the following—*
 - (a) *the management, control and administration of public funds, the persons who may be appointed as the functionary of a mutual fund and the duties of functionaries;*
 - (b) *custodial arrangements;*

- (c) *the issue and redemption of fund interests;*
- (d) *the rights of investors;*
- (e) *income of public funds;*
- (f) *investments and borrowing;*
- (g) *pricing and dealing;*
- (h) *the suspension and termination by a mutual fund of its operation or business;*
- (i) *the valuation of assets and liabilities; and*
- (j) *record keeping.*

(iv) *Not all of these matters are covered by the Code.*

Status of the Public Funds Code

(v) *As the Public Funds Code is made by the Commission under powers given to it under SIBA, it has the status of delegated or subsidiary legislation. As subsidiary legislation, the Code has the status of “law” in the BVI. A requirement in the Code—*

- (a) *must therefore be complied with by every person to whom it applies;*
- (b) *has effect as law and therefore has the same legal force as if it had been contained in SIBA or the MFR; and*
- (c) *is enforceable by the Commission [see “Enforcement of the Code” below].*

(vi) *As far as possible, the Code is to be interpreted purposively. The purposive approach to interpretation requires legislation to be interpreted in accordance with the purpose or objectives of the legislation. Public funds and their functionaries should be prepared, therefore, to look beyond the literal meaning of the text, especially if this seems to be contrary to the intended purpose.*

Enforcement of the Code

(vii) *A public fund is a licensee within the meaning of the Financial Services Commission Act [referred to in the Explanatory Notes as “the FSC Act”]. The FSC Act gives the Commission power to take enforcement action against a licensee if the licensee has contravened, or is in contravention of any regulatory legislation. SIBA and its subsidiary legislation [including the Public Funds Code] fall within the definition of “regulatory legislation”. The Public Funds Code is therefore enforceable under the FSC Act.*

(viii) *Where the Commission is entitled to take enforcement action against a public fund, the FSC Act provides the Commission with a range of enforcement powers. These include issuing a directive, requiring a public fund to appoint a qualified person to advise it, undertaking an investigation into a public fund’s business and imposing administrative penalties on the fund. Any contravention of the Code will also be taken into account by the Commission in assessing whether a public fund is “fit and proper” to continue to be registered as a public fund.*

Status of the Explanatory Notes

- (ix) *With the objective of making the Code as user friendly as possible, the Code is supplemented by Explanatory Notes which are set out immediately following the paragraphs of the Code to which they apply. As specified in section 3 of the Code, the Explanatory Notes are not part of the Code and do not, therefore, have the force of law. Nevertheless, the Explanatory Notes should be read together with the Code as they are used, for example, to set out—*
- (a) *important background or explanatory information;*
 - (b) *the factors that the Commission will take into account in considering whether or not a requirement in the Code, SIBA or the MFR has been complied with; and*
 - (c) *guidance on how the Commission expects public funds and their functionaries to ensure compliance with the Code.*
- (x) *To distinguish them from the Code, the Explanatory Notes are indented and printed in italics.*

Amendment of Code

- (xi) *The Commission may, with the approval of the Board of Commissioners, amend the Code [SIBA s. 63(2)]. Where the Code is amended, public funds to whom the additional or modified requirements apply will usually be given a reasonable period of time within which to comply with the new or modified requirements.*

Commencement

- (xii) *The Commission recognises that elements of the Code are new. Although most public funds should already be broadly compliant, it is important that public funds, their functionaries and advisors have sufficient time to bring public funds into full compliance. In relation to existing public funds that were given a transition period of up to 31 December, 2010 to comply with matters relative to prospectuses and invitations to the public to subscribe for or purchase fund interests (sections 46 and 50(3) of SIBA, this period has been extended to 30 June, 2011 by virtue of the Securities and Investment Business (Amendment of Schedule 8) (No. 2) Order, 2010. However, the Code will apply to all public funds registered on or after 31 March, 2011.*

Definitions

2. The following definitions apply for the purposes of this Code—

“Act” means the Securities and Investment Business Act;

“asset” includes a financial instrument;

“board”, in relation to a BVI business company, means—

- (a) the board of directors, committee of management, council or other governing authority of the company; or
- (b) if the company has only one director, that director;

“Code” means the Public Funds Code;

“FSC Act” means the Financial Services Commission Act;

“fund” means a public fund;

“fund property”, in relation to a public fund, means—

- (a) where the fund is a BVI business company, the assets of the fund; and
- (b) where the fund is a unit trust, the assets subject to the trust deed that constitutes the fund;

“governing body” means—

- (a) in the case of a company, the board; and
- (b) in the case of a unit trust, the trustee;

“hard-to-value asset” means an asset for which there is no readily available market price;

“NAV” or “net asset value” means the value of the fund property, including accrued interest, dividends and other receivables, less the value of the total liabilities of the fund, including accrued expenses, accrued fees and other payables;

“NAV function” means the function of calculating the NAV of a fund, in accordance with the valuation policy;

“procedures” includes systems and controls;

“Regulations” means the Mutual Fund Regulations;

“valuation function” means the valuation of the fund property in accordance with the valuation policy; and

“valuation policy”, in relation to a public fund, means the policy for the valuation of the fund property established and maintained in accordance with section 15 and, where more than one such policy is established and maintained, includes all those policies.

General interpretative provisions

3. (1) The Explanatory Notes provided under any sections of this Code do not represent legal interpretations of the sections concerned, but are provided merely to serve as a guide and to afford clarity in better understanding the sections and the overall requirements of, or obligations under, the Act, the Regulations and this Code.

(2) Notwithstanding subsection (1), a court or the Commission may, in dealing with any matter under or in relation to this Code, have regard to the Explanatory Notes provided in this Code.

EXPLANATORY NOTES

Definitions

- (i) *As the Code has the status of subsidiary legislation made under SIBA, any terms defined in SIBA have the same meaning in the Code, unless the Code expressly provides otherwise, in which case the specific definition in the Code prevails. The definitions in SIBA are not generally repeated in the Code although, where it is considered helpful, the definitions are referred to in the Explanatory Notes.*
- (ii) *A number of terms, defined in SIBA, are particularly important for the Code, for example, “public fund”, “BVI business company”, “director”, “fund manager” and “fund administrator”. These are not repeated in the Code.*

Director and Board

- (iii) *The definition of “board” in the Code is substantively the same as the definition in the BVI Business Companies Act.*

In effect, the board is the directors of the company acting together. The definition provides, as the BVI Business Companies Act does, that if the company only has one director, “board” means that director. This is necessary in order to ensure that obligations imposed by this Code on the governing body of a public fund are imposed on the director, should the fund for any reason have a single director. However, the MFR provide that a public fund must at all times have at least two directors. The definition of “board” should not, therefore, be taken as permitting a public fund to have a single director. A fund with a single director would be in breach of the MFR and subject to enforcement action by the Commission.

IOSCO

- (iv) *The terms “IOSCO” and “IOSCO Objectives and Principles” are used in the Explanatory Notes, but not the Code itself.*

“IOSCO” is the acronym for the International Organization of Securities Commissions, which is the body responsible for setting international standards with respect to investment business and securities. The BVI Government and the Commission are committed to implementing the standards set by IOSCO as far as relevant and applicable to public funds.

- (v) *The term “IOSCO Objectives and Principles” is used to refer to the Objectives and Principles of Securities Regulation issued by IOSCO. These represent the core internationally agreed standards for the regulation of the securities industry, including public issuers, mutual funds and market intermediaries.*

Application of the Code

4. (1) Subject to subsection (2), this Code applies to—

- (a) a public fund; and
- (b) such other persons as the Code may, in respect of any particular provisions, expressly provide.

- (2) This Code does not apply to a public fund—

- (a) to the extent that the Code expressly provides otherwise;
- (b) in respect of any provisions where, from the context, it is clearly intended that the provisions are not intended to apply to the public fund concerned or are intended to apply to public funds of a different category or type than that of the public fund concerned; or
- (c) to the extent specified in any notice issued by the Commission with respect to the public fund under section 40C of the FSC Act.

(3) In the case of a public fund that is a unit trust, any requirement or obligation imposed on the fund shall, where the context permits, be construed as a requirement or obligation imposed on the trustee.

(4) If the application of the Code to a public fund or any other person results in a conflict with a provision in the Act or the Regulations, that provision of the Act or Regulations prevails.

EXPLANATORY NOTES**Direction to Disapply the Code**

- (i) *The Commission may, on the application of, or with the consent of, a public fund direct that specified provisions in the Code do not apply to the fund or that specific provisions apply to the fund subject to specified modifications [s. 63(5) of SIBA].*
- (ii) *The Commission is unlikely to direct that the Code should be disapplied or modified with respect to a public fund unless the fund can demonstrate that a strict application of the Code would produce an anomalous result.*

PART I

PRINCIPLES FOR BUSINESS

High level principles

5. A public fund shall at all times carry on business in accordance with the following four principles—

1. Integrity

A public fund shall conduct its business with integrity.

2. Management and Control

A public fund shall take reasonable care to organise and control its affairs effectively taking into account the nature, scale, complexity and diversity of its business and the risks that it faces.

3. Investors' Interests

A public fund shall have due regard for the interests of its investors and treat them fairly; in addition, a public fund shall make appropriate arrangements to protect the fund property and take all reasonable steps to identify and manage conflicts of interest.

4. Relationship with Commission

A public fund shall deal with the Commission in an open and cooperative manner.

EXPLANATORY NOTES**Introduction**

- (i) *The objective of this Part is to establish a set of high level Principles for the conduct by public funds of their businesses.*
- (ii) *The Commission understands that public funds are essentially vehicles that are managed, administered and operated by independent functionaries. However, a public fund that is a company is a separate legal entity that is registered by the Commission under SIBA in its own right. A public fund is treated as a licensee for the purposes of the FSC Act.*

- (iii) *Although the functionaries may act on behalf of a public fund, they are appointed by the fund which must ensure that the functionaries appointed are able to operate the fund satisfactorily and that conflicts of interest are properly handled. While a public fund will not usually have employees or senior management, a public fund that is a BVI business company must have a board of directors that has duties and responsibilities that are separate from the fund's functionaries. Ultimately, the board of a public fund has responsibility for the operation of the fund.*
- (iv) *A public fund that is a unit trust is not a legal entity. In the case of a unit trust, section 4(3) of the Code therefore provides that any requirement or obligation imposed on the fund shall, where the context permits, be construed as a requirement or obligation imposed on the trustee. These Principles apply to the trustee, not in relation to the trustee's own business, but in relation to the obligations imposed upon the fund.*
- (v) *In the circumstances, the Commission considers that a public fund should be subject to certain high level principles of business. These are adapted from the high level principles that apply to licensees under the Regulatory Code. Obviously, these must be interpreted sensibly, taking full account of the fact that the fund is operated by functionaries.*

Responsibility of public fund with Respect to Principles

- (vi) *The Code is designed to give practical effect to the Principles. However, it is not possible for the Code to be exhaustive. In areas where the Code is not specific or where it does not cover a particular situation, public funds should apply the Principles appropriately. Furthermore, it remains the responsibility of a public fund to ensure that it carries on its business in accordance with the Principles. Depending upon the nature, scale, complexity and diversity of a public fund's business, it may be necessary for public funds to adopt higher standards than provided for in the Code in order to ensure compliance with the Principles. In such a case, a public fund that is in compliance with all the detailed requirements of the Code may nevertheless be in breach of the Principles and therefore liable to enforcement action.*
- (vii) *There are no specific provisions in the Code relating to Principle 1 (Integrity). The Commission considers this Principle to be fundamental to all activities of a public fund and any failure to comply with the Principle would be regarded by the Commission as an extremely serious breach of the Code.*
- (viii) *Principle 2 (Management and Control) requires a public fund to take reasonable care to organise and control its affairs effectively. It should be appreciated that the inclusion of a reasonableness test is not intended to import a lower standard. However, it is intended to ensure that where, for example, a public fund fails to prevent an unforeseen risk, it will not be in breach of the Principle. The Code imposes certain specific corporate governance and other obligations on a public fund. These are intended to amplify Principle 2.*
- (ix) *Principle 3 relates to the protection of investors' interests. Its provisions include a requirement that a public fund shall have due regard for the interests of its investors and treat them fairly. The Commission understands that investors accept that an investment in a public fund carries some risk. Depending upon the objectives of the fund, the risk may be high or low. Furthermore, the Code contains a number of requirements concerning disclosure of risk, particularly in the fund's prospectus. The requirement to "have due regard for the interests of investors"*

should be interpreted taking full account of the objectives of the fund and the provisions of its prospectus and constituting documents. For example, the Commission does not consider that this provision requires public funds to avoid properly disclosed risks. Indeed, to do so may not be in the best interests of investors.

This Principle is not, therefore, intended to impose requirements that would interfere with the investment strategy of a public fund, where that strategy is in accordance with the disclosed objectives of the fund. The Principle is, however, intended to impose an obligation to have proper regard for investors' interests, given those investment objectives.

PART II

OPERATION OF PUBLIC FUNDS

Prospectus

Prospectus

6. (1) A prospectus issued by a public fund shall—

(a) not contain any matter that—

(i) is unfairly prejudicial to investors generally or to any class of investors;

(ii) conflicts with the Act, the Regulations or this Code; and

(b) contain the information and matters specified in Schedule 1.

(2) A public fund shall supply a copy of the most recent prospectus to any investor who requests it.

EXPLANATORY NOTES

(i) *Section 6(1)(a)(i) provides that the prospectus should not contain any matter that is unfairly prejudicial to investors generally or to any class of investors.*

(ii) *The Commission understands that in many cases there are valid reasons for different classes of investors to be treated differently. Where this is fully disclosed, the Commission does not consider that, on its own, this constitutes unfair prejudice. However if, for example, the prospectus permits the rights of investors to be materially changed without their consent, the Commission considers that this may be unfairly prejudicial to investors. In construing this provision it may be necessary to consider the type of investor involved. For example, the unfair prejudice threshold may be lower for a small investor with limited experience than for a large experienced investor.*

Corporate Governance

Corporate governance

7. (1) A public fund shall—

- (a) take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities between its governing body and functionaries so that—
 - (i) it is clear who has which of those responsibilities; and
 - (ii) the business and affairs of the fund can be adequately monitored and controlled by the governing body; and
- (b) establish and maintain such procedures as are appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property.

(2) A public fund shall ensure that its procedures are regularly reviewed and updated as required.

Directors of public fund

8. A public fund that is a BVI business company shall have an adequate number of directors who—

- (a) are capable of exercising independent judgment;
- (b) have sufficient knowledge, skills, experience and understanding of the fund's business to ensure that the governing body is able to fulfil its responsibilities; and
- (c) have sufficient time and commitment to undertake their duties diligently.

Responsibilities of governing body

9. (1) The governing body of a public fund has ultimate responsibility for the business and affairs of the fund and for ensuring its effective organisation.

(2) Without limiting subsection (1), the governing body of a public fund has the following responsibilities—

- (a) ensuring that the policies and procedures required by this Code are established and maintained by the fund;
- (b) approving and periodically reviewing the significant policies of the fund;
- (c) ensuring that—
 - (i) appropriate and effective procedures are established, maintained and implemented for giving effect to the policies of the fund, which shall include internal controls and procedures with respect to risk management; and
 - (ii) the public fund complies with its obligations under the Act, the Regulations and this Code;
- (d) monitoring the financial condition of the fund; and

- (e) such other responsibilities as are specified in this Code.

Policies and Procedures

Establishment of policies and procedures

10. (1) A public fund shall—

- (a) establish such policies and procedures, including internal controls, as are appropriate given the nature, size, complexity, structure and diversity of its business and the fund property; and
- (b) ensure that the policies and procedures are fully and clearly documented and communicated, as appropriate, to functionaries and other persons who need to implement them.

(2) Without limiting subsection (1), the policies and procedures of a public fund shall specify the duties and responsibilities of the governing body, including such responsibilities and duties as are imposed on the governing body by this Code.

Conflicts of interest

11. The policies and procedures of a public fund shall include—

- (a) the identification of conflicts of interest, whether arising between the fund and its affiliates, between the fund and its functionaries or their affiliates, the governing body and the fund or the governing body, fund, functionaries or their affiliates and investors, or otherwise; and
- (b) the management of any conflicts of interest identified.

Segregation and Safekeeping of Fund Property

Custodial arrangements

12. (1) Unless a public fund has been exempted by the Commission from the requirement to appoint a custodian under Regulation 16(2) of the Regulations, the fund shall ensure that at all times it has a custodial agreement with its custodian which includes provisions for—

- (a) the appropriate segregation of the fund property; and
- (b) the taking of adequate measures by the custodian to ensure the safekeeping of the fund property.

(2) A public fund referred to in subsection (1) shall ensure that all fund property is transferred into the custody, or taken under the control, of its custodian as soon as reasonably practicable after it is acquired.

(3) A public fund that has been exempted by the Commission from the requirement to appoint a custodian under Regulation 16(2) of the Regulations shall put in place, and ensure that at all times it maintains, adequate arrangements for—

- (a) the segregation of the fund property from the property of other functionaries of the fund; and

- (b) the safekeeping of the fund property.

Procedures

13. (1) A public fund shall—

- (a) establish, maintain and implement procedures, appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property, to ensure compliance with section 12; and
- (b) ensure that the procedures are fully and clearly documented.

(2) The procedures established under subsection (1) shall be approved and reviewed by the governing body on at least an annual basis and the governing body shall make a record of how it has complied with this subsection.

(3) The governing body shall oversee the implementation of the procedures.

Issue and redemption of fund interests

14. (1) A public fund shall—

- (a) establish and maintain—
 - (i) a policy for the issue and redemption of fund interests;
 - (ii) procedures that are sufficient to ensure that the policy is effectively implemented; and
- (b) ensure that the issue and redemption policy is fully and clearly documented.

(2) The issue and redemption policy and procedures shall be—

- (a) appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property;
- (b) consistent with the provisions concerning valuation in the constituting documents and the prospectus; and
- (c) approved and reviewed by the governing body on at least an annual basis.

(3) Without limiting subsection (1), the issue and redemption policy shall make provision for the following matters—

- (a) the dealing days and times in the dealing day on which the fund will be available to receive requests for the issue and redemption of fund interests;
- (b) the procedures for effecting the issue and redemption of fund interests and the settlement of transactions;
- (c) the steps required to be taken by an investor redeeming fund interests before he or she can receive the proceeds of redemption;
- (d) the amounts of the following minima (if relevant) for each class of fund interest in the fund—
 - (i) the minimum number of fund interests which any one person may hold;

- (ii) the minimum value of fund interests which any one person may hold;
- (iii) the minimum number or value of fund interests which may be the subject of any one transaction of purchase; and
- (iv) the minimum number of fund interests which may be the subject of any one act of redemption;
- (e) the circumstances in which the redemption of fund interests may be suspended;
- (f) where and when the most recent issue and redemption prices will be published; and
- (g) the investment exchanges, if any, on which fund interests are listed or dealt.

Valuation and Pricing

Establishment of valuation policy and procedures

15. (1) A public fund shall—
- (a) establish and maintain—
 - (i) a clear and comprehensive policy, or policies, for the valuation of the fund property; and
 - (ii) procedures that are sufficient to ensure that the valuation policy is effectively implemented; and
 - (b) ensure that the valuation policy and procedures are fully and clearly documented.
- (2) The valuation policy and procedures shall—
- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property;
 - (b) comply with the requirements of this Part, and in particular section 19; and
 - (c) be consistent with the provisions concerning valuation in the constitutional documents and the prospectus.
- (3) The valuation policy shall be approved and reviewed by the governing body, following consultation with such persons as the governing body considers appropriate—
- (a) at any time when the fund's investment strategy changes or its activities involve a new type of fund property;
 - (b) whenever anything occurs that may affect its validity, relevance or appropriateness; and
 - (c) in any case, on at least an annual basis.
- (4) A public fund shall ensure that its fund property is consistently valued in accordance with the valuation policy.

Independence of, and within, valuation process

16. (1) The governing body of a public fund shall ensure that—

- (a) the persons controlling the fund's manager, or such other persons having responsibility for the investment function, are independent from the persons controlling the fund's administrator, or such other person having responsibility for the valuation process;
- (b) where appropriate, there is segregation of responsibilities between those parties concerned with the process of valuing the fund property and calculating the fund's NAV, with the objective of ensuring that there is adequate independence in the application of the valuation policy; and
- (c) the parties concerned in the valuation process have the appropriate level of experience and competence to properly fulfil their roles.

(2) Subject to subsection (4), a public fund shall ensure that the valuation and NAV functions are undertaken by the fund administrator or by a third-party valuation service provider, independent of the governing body and the fund's other functionaries, appointed for the purpose.

(3) For the purposes of subsections (1) and (2), a public fund may consider an affiliate of the manager to be independent of the manager, if it is satisfied that the group structure ensures functional independence.

(4) Where it considers that the circumstances so require, the governing body may approve the involvement of the manager in the valuation process provided that the manager's involvement is fully disclosed in the prospectus, together with an explanation for the manager's involvement.

(5) The governing body shall—

- (a) determine whether, given the nature, size, complexity, structure and diversity of the fund and the fund property, it is appropriate for the fund to have a valuation committee; and
- (b) if it so determines, appoint a valuation committee.

(6) The valuation committee of a public fund, if appointed, shall have the following responsibilities—

- (a) overseeing the application of the valuation policy;
- (b) reviewing the valuation policy;
- (c) such other responsibilities as are given to it by the governing body; and
- (d) reporting regularly to the governing body on the exercise of its functions.

Pricing and price overrides

17. (1) Subject to subsection (3), the assets of a fund shall be valued using market prices.

(2) Wherever practicable, the valuation of an asset shall be checked against a primary and secondary source and the valuation policy shall specify the hierarchy of sources to be used for each asset and the tolerance levels for variances between the sources.

(3) Hard-to-value assets may be valued using pricing models to determine a fair value, provided that the use of the pricing model has been approved by the governing body.

(4) Where a pricing model is used—

- (a) its use shall be justified by appropriate testing; and
- (b) it must be capable of practical implementation by the parties concerned in the valuation process.

(5) Where the valuation policy permits price overrides, it shall require an independent review of the price override to be conducted as soon as reasonably practicable and provide for the appropriate reporting of the results of the review.

NAV reports

18. (1) A public fund shall ensure that it prepares reports of its NAV in accordance with the valuation policy.

(2) A NAV report shall be—

- (a) addressed directly to investors of the fund; and
- (b) published in such a way that the investors have ready access to it.

Disclosure to investors

19. (1) If the manager has a material role in the valuation of the fund property or the calculation of the NAV, the fund shall make adequate disclosure of the manager's involvement to the investors.

(2) Subsection (1) applies, even if the administrator or a third-party valuation service provider is appointed.

(3) The procedures of a public fund shall include arrangements for the provision of information concerning the valuation process to investors on request.

(4) The procedures specified in subsection (3) shall include—

- (a) the valuation information that will be made available to investors, without the need for a request;
- (b) the valuation information that may be requested by investors; and
- (c) how valuation information will be disseminated to investors, which may include by placement on a website, electronically or otherwise.

EXPLANATORY NOTES

Introduction

- (i) *The requirements in the Code relating to valuation and pricing are designed to implement the requirements of Principle 20 of the IOSCO Objectives and Principles, as amplified by the Methodology. Principle 20 provides that the regulatory framework should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a public fund. The Commission has also drawn on, the following documents in drafting the Code and the Explanatory Notes:*

- (a) *Principles for the Valuation of Hedge Fund Portfolios*, published by IOSCO in November 2007; and
 - (b) *AIMA's Guide to Sound Practices for Hedge Fund Valuation*, published by the Alternative Investment Management Association ("AIMA") in March 2007.
- (ii) *The governing bodies and functionaries of public funds are strongly recommended to review both these documents and take them into account in developing and implementing appropriate valuation and pricing policies as they provide more detail than can be included in the Explanatory Notes.*
- (iii) *It should be noted that both documents are intended to apply specifically to hedge funds. Although the Commission considers that the same principles should apply to public funds, the valuation and pricing requirements in this Code should be regarded as minimum requirements. Section 15(2) of the Code provides that the valuation policy and procedures must be appropriate to the circumstances of the fund.*

The governing body of a public fund should consider the requirements of the Code to be no more than a base line. The governing body of every public fund should consider whether, given the circumstances of the fund, the requirements in the Code should be exceeded.

Establishment of Valuation Policy

- (iv) *The Code requires the prospectus to include certain information concerning the valuation of the fund property. Although the Commission expects the prospectus to include a reasonably comprehensive overview, it does not expect it to contain the level of detail that will be contained in the valuation policy. This would not be reasonable as it is likely that the detailed valuation policies and procedures will evolve over time, which would necessitate changes to the prospectus. Schedule 1, therefore requires the prospectus to indicate the existence of a valuation policy and provide details of how a copy may be obtained.*
- (v) *Section 15(3) of the Code provides that the valuation policy should be approved by the governing body after consultation with such persons as the governing body considers appropriate. The Commission considers that the investment manager should usually be consulted. Consideration should also be given to consulting with the auditor, particularly if the fund property includes hard-to-value assets.*

Implementation of valuation policy

- (vi) *Section 15(4) requires that fund property is consistently valued in accordance with the valuation policy. This requires that the valuation policy and methodologies should generally be—*
 - (a) *applied to all assets comprised in the fund property that share similar economic characteristics;*
 - (b) *applied across all funds that have the same Manager, taking time zone and trading strategies into account; and*
 - (c) *applied over time unless circumstances arise that suggest that the valuation policy requires updating.*

It is particularly important that valuation sources and rules should, as far as possible, remain consistent over time.

Review of Valuation Policy

- (vii) *It is important that the valuation policy is subject to regular review to ensure that it continues to be appropriate, given the fund's investment strategies. The Code therefore requires the governing body to review the valuation policy when the fund's investment strategy changes or its activities involve a new type of fund property.*
- (viii) *The objective of the review should be to determine whether the existing policies and procedures sufficiently address the new types of strategies or investments.*
- (ix) *Regardless of events or changes, the Code requires that the valuation policy is subject to regular review by the governing body, on at least an annual basis. This is a minimum requirement. The Commission expects that, if the circumstances of a fund require, the valuation policy will be reviewed more frequently.*

Matters that Commission expects to be included in the Valuation Policy

- (x) *The Code does not specify in detail the matters that must be included in the valuation policy. The Commission considers that this should be determined by the governing body of the fund. However, the Commission would normally expect to see the following matters included in the valuation policy—*
 - (a) *the obligations and responsibilities of each person concerned with the valuation of the fund property, clearly apportioning the responsibilities between the governing body, relevant functionaries and other persons in order to ensure compliance with section 16(1)(b) (segregation of responsibilities and independence);*
 - (b) *oversight of the valuation policy, including the persons responsible for oversight and the frequency of oversight;*
 - (c) *the methodologies that will be used for valuing each type of asset comprised in the fund property, which shall include—*
 - (i) *criteria for the selection of inputs and pricing and market data sources;*
 - (ii) *details of any pricing models that are to be used; and*
 - (iii) *the process for the approval of pricing models;*
 - (d) *the appropriate time for closing the books for valuation purposes;*
 - (e) *for each type of hard-to-value asset, a methodology or procedure for arriving at a consistent valuation to be included in the NAV;*
 - (f) *the valuation adjustments (if any) related to the size and liquidity of positions, as appropriate;*
 - (g) *the process for handling and documenting price overrides;*
 - (h) *a requirement that, whenever possible and appropriate, prices should be obtained from independent sources;*
 - (i) *a validation procedure which governs how a single source or non-independent source may be justified;*
 - (j) *the calculation of NAV;*
 - (k) *the frequency with which assets will be valued and NAV calculated;*

- (l) *how valuations and NAV calculations will be used and when and how they will be published;*
- (m) *an appropriate level of independent review of each valuation;*
- (n) *escalation procedures for the management of exceptions;*
- (o) *the process for formulating policies when the fund invests, or trades, in a new type of asset not covered by the valuation policy;*
- (p) *how the valuation of assets will be undertaken in case an instrument falls outside the scope of the existing valuation policies and procedures;*
- (q) *the accounting standards that will be followed; and*
- (r) *the processes for amending the valuation policy.*

Where the governing body determines that the valuation policy will not include one or more of the matters specified in this paragraph, the governing body should ensure that the decision is recorded in writing, together with the reasons for the decision.

- (xi) *The valuation policy should provide for an appropriate level of independent review of each valuation. It is for the governing body to determine what level of review is appropriate. In order to determine this, the governing body will need to consider the risks of inappropriate pricing and valuation. There are certain situations in which the risk is greater. For example—*
 - (a) *prices are only available from a single counterparty or broker source;*
 - (b) *prices supplied by the counterparty who originated an instrument, and in particular where the originator is also financing the Manager's position in the same instrument;*
 - (c) *illiquidity of instruments (e.g., small cap stocks or OTC derivatives or structured products);*
 - (d) *valuations influenced by the Manager;*
 - (e) *valuations influenced by parties related to the Manager; and*
 - (f) *valuations influenced by other entities that may have a financial interest in the fund's performance.*

Where any of the above risks are present, the governing body should factor this into the review procedure for individual valuations.

- (xii) *The Commission recognises that in the case of hard-to-value assets, it may be more difficult to obtain an independent review.*
- (xiii) *The valuation policy should include controls that enable checks to be carried out in relation to values obtained from external sources. These checks should seek to determine the reasonableness of the values and the review of material exceptions.**
- (xiv) *Explanatory Note (x)(n) indicates that the valuation policy should include escalation procedures for the management of exceptions. It is a pre-requisite that the valuation policy sets accepted tolerance levels for differences between price sources, at a position and portfolio level. The escalation procedures should*

* For examples of possible checks, see the IOSCO Report on Principles for the Valuation of Hedge Fund Portfolios referred to above.

provide for breaches of those tolerance levels, together with situations where the degree of subjectivity in pricing is such that the governing body should periodically undertake reviews.

Segregation of Responsibilities, Independence and Competence

- (xv) *Independence of those concerned with the valuation function is extremely important, as is independence in the valuation process, and also within any party concerned with the valuation process. Other than in exceptional cases, the Commission therefore considers that valuations should be carried out by the administrator or a third party valuation service provider.*
- (xvi) *However, the Commission recognises that there may be circumstances which justify the manager undertaking part of, or assisting with, the valuation and NAV functions. The governing body should not approve the involvement of the manager unless—*
 - (a) *it is satisfied that there are exceptional reasons that justify the involvement of the manager in the valuation process;*
 - (b) *there is adequate disclosure of the manager's role in the valuation process in the prospectus, together with an explanation as to why the involvement of the manager is necessary;*
 - (c) *the fund has adequate procedures in place to manage the conflict of interest; and*
 - (d) *the manager has adequate procedures in place to manage the conflict of interest, that include separation between the management and valuation functions and separate reporting lines.*
- (xvii) *If the governing body appoints a valuation committee, it should ensure that the members of the committee have the authority and experience to provide meaningful oversight of the valuation process and that at least some of its members are independent of the manager.*
- (xviii) *The Code also requires the governing body to be satisfied that the parties concerned in the valuation process have the appropriate level of experience and competence to properly fulfil their roles. Therefore the Commission would expect that where a third party is appointed to perform valuation services, whether an administrator, a third party service provider or, in exceptional circumstances, the manager, the governing body would carry out appropriate due diligence before the appointment and on an ongoing basis.*

Pricing Models/Methodologies

- (xix) *The selection of a methodology to value a particular class of assets directly affects the resulting price. In selecting the methodology to value an asset, account should be taken of the sensitivity of varying methodologies and how specific strategies may determine the relative value of the assets in the portfolio. The selection process for a particular methodology should include an assessment of the different relevant methodologies that are available by appropriately qualified and experienced parties.*
- (xx) *If a model is used to value an asset, the model and the variable inputs should be explained and justified in the valuation policy and procedures. Underlying data, assumptions and limitations of model-based valuations, in addition to the rationale for using them, should be appropriately documented (preferably*

contemporaneously) to facilitate later review. The valuation policy should specify how the model and its inputs will be checked for appropriateness.

Price Overrides

- (xxi) *Where, for any reason, the value for an asset determined in accordance with the valuation policy is rejected, the valuation policy must require an independent review to be undertaken. The detail of, and reasons for, each override should be documented contemporaneously with the override including any evidence supporting the case for the proposed override. A price override should not normally be used as an input into the calculation of the fund's formal net asset value until the review has taken place. Such a report, prepared regularly, could be one of the mechanisms by which the independent party satisfies itself that a consistent application of the policies and procedures is taking place.*
- (xxii) *Where overrides have occurred, any other assets in the fund that are related to the overridden instrument should be reviewed to assess whether any additional adjustments are also required. The repeated use of overrides for a particular asset should trigger a review of the policies and procedures.*

Valuation Committee

- (xxiii) *Section 16(5) and (6) provide for the appointment of a valuation committee. It should be noted that section 16(5) requires only that the governing body consider whether to appoint a valuation committee, not to actually appoint such a committee.*

NAV Reports

- (xxiv) *Section 18 requires a public fund to prepare NAV reports in accordance with the valuation policy. Whilst some funds may consider it appropriate to provide investors with a detailed NAV report, this is not a requirement of the Code. The Commission is content to leave the precise contents of the NAV report to the fund. However, the Commission would expect the NAV report, at a minimum, to include the NAV of the fund, and each class of fund interests, and the NAV per fund interest at the date specified in the report.*

Disclosure to Investors

- (xxv) *The arrangements for the valuation of the fund property of a public fund must be transparent to investors (section 19). Relevant information that the Commission expects would typically be made available to investors upon request include, but are not necessarily limited to—*
- (a) *a description of the roles, skills and experience of all of the parties that are involved in the valuation process;*
 - (b) *a description of the extent to which valuations have been provided by or influenced by the manager;*
 - (c) *a description of any material conflicts of interest associated with the parties who are valuing the fund's assets; and*
 - (d) *information about the nature and degree of any contracted pricing services.*
-

*Dealing and Managing***Dealing and managing by functionaries**

20. A public fund shall take reasonable steps to protect the interests of the fund and in so doing shall have regard to compliance by its functionaries of their obligations with respect to dealing and managing specified in sections 191 to 197 of the Regulatory Code.

*Record keeping***Public fund to maintain records**

21. (1) A public fund shall keep adequate and orderly records which, insofar as not covered by section 59 of the Act, shall include records of its business and operations, including records of all transactions relating to assets that form part of the fund property and all transactions in or relating to fund interests.

(2) The records kept by a public fund shall be sufficient to enable the Commission to monitor its compliance with its obligations under the Act, the Regulations and this Code.

(3) A public fund shall—

- (a) maintain its records so that they can be readily retrieved in the Virgin Islands and, if kept otherwise than in legible form, so that they can be accessed and read at a computer terminal in the Virgin Islands and produced in the Virgin Islands in legible form and in the English language without undue delay; and
- (b) ensure that its records are kept up to date and that a full audit trail is maintained of all changes to its records.

(4) A public fund shall not keep any records that it is required to maintain under the BVI Business Companies Act, the Act or this Code outside the Virgin Islands if access to those records will or is likely to be impeded by confidentiality or data protection restrictions.

Retention of records

22. (1) A public fund shall establish a record retention policy which shall include—

- (a) the period of time for which various types of record will be retained, which shall be no less than the minimum period specified in subsection (2);
- (b) how records are to be securely and safely stored; and
- (c) the process by which stored records can be readily accessed when required by the public fund, the Commission, law enforcement agencies or other persons entitled to access them.

(2) Subject to the BVI Business Companies Act, or any other enactment requiring a public fund to retain records for a longer period, a public fund shall retain all records that it is required to maintain under this Code for a period of at least 5 years.

(3) In the case of records relating to transactions with an investor, the 5 year period shall commence on the termination of the public fund's relationship with the investor.

EXPLANATORY NOTES

- (i) *Section 21(3) sets out requirements concerning access to a fund's records in the BVI. The objective of this provision is to ensure that all records of the fund can be made available in the BVI without undue delay to ensure regulatory compliance and, if necessary, by the law enforcement authorities.*
- (ii) *Given that public funds are not required to have an office in the BVI, there is no requirement for funds to keep their records or even copies of their records in the BVI. However, it is essential that they should be accessible in the BVI without undue delay.*
- Where records are maintained in electronic form (which would be the case for most records), this section may be complied with by putting arrangements in place that would enable records either to be accessible from a computer terminal in the BVI or to be transmitted electronically to the BVI on request. This could be via e-mail or some other form of electronic transmission.*
- (iii) *Where records are not held in electronic form, the Commission would expect that scanned copies of the records could be sent to the BVI electronically. Where the records comprise a significant amount of documentation that is not in electronic form, it may be appropriate for the records to be sent by courier.*
- (iv) *The term "without undue delay" should be construed in the context of the records concerned. Where the records are held in electronic form, but not directly accessible from a computer in the BVI, the Commission would expect them to be made available electronically very quickly. Obviously, in the case of paper records being sent by courier, the Commission accepts that this would take longer.*

Relationship with, and Reporting to, the Commission

Significant regulatory impact disclosure

23. (1) A public fund shall disclose to the Commission any matter that might reasonably be expected to have a significant regulatory impact.

(2) Without limiting subsection (1), the following shall be regarded as matters that might reasonably be expected to have a significant regulatory impact—

- (a) the suspension of valuation, dealing or redemptions;
- (b) any matter that could impact on the ability of the public fund to continue to carry on business; and
- (c) any incidence of fraud or other criminal activity that is connected with, or may affect, the public fund's business if the fraud or criminal activity is material to the safety, soundness or reputation of the public fund.

(3) In determining whether a disclosure should be made under this section, a public fund shall consider—

- (a) its business and activities that are not subject to supervision by the Commission; and
- (b) the business and activities of its affiliates.

(4) Disclosure under subsection (1) shall be made immediately after the public fund—

- (a) becomes aware of the matter concerned; or
- (b) has reasonable grounds for believing that the matter concerned has occurred or that it may occur in the foreseeable future.

Required standard of disclosure

24. (1) A public fund shall use its best endeavours to ensure that all information and documents that it provides to the Commission are accurate and complete.

(2) If a public fund becomes aware that any information or documentation that it has provided to the Commission is not accurate or complete, the public fund shall—

- (a) immediately on becoming so aware, notify the Commission that it has provided inaccurate or incomplete information; and
- (b) within 7 days, or such shorter period as the Commission may require, provide the Commission with such information or documentation as is required to ensure that subsection (1) is complied with.

Certain events and changes to be notified to Commission

25. (1) Without limiting section 23, a public fund shall notify the Commission in writing of any event specified in Schedule 2, within the time limit specified against the event.

(2) Where the time limit specified in Schedule 2 is “immediate”, the public fund shall notify the Commission—

- (a) immediately after there are reasonable grounds for the public fund believing that the event is likely to occur in the foreseeable future; and
- (b) whether or not paragraph (a) applies, immediately after the public fund knows, or has reasonable grounds for believing, that the event has occurred.

(3) A public fund shall not, without giving the Commission reasonable prior written notice, cause or permit a change in—

- (a) its name or any business name under which it carries on regulated business;
- (b) the address of its principal office or place of business, whether in or outside the Virgin Islands;
- (c) the address of its registered office; or
- (d) its authorised representative.

EXPLANATORY NOTES

Summary of Requirements

- (i) *The fourth principle for business requires a public fund to deal with the Commission in an open and cooperative manner. SIBA, the MFR and the Code set out a number of requirements relevant to this principle. These may be classified as follows—*

- (a) *all public funds are required to submit documents and returns to the Commission on a regular basis, as required;*
 - (b) *SIBA, the MFR and the Code specify certain events and changes that trigger a requirement to provide information to the Commission (specific event triggered disclosures); and*
 - (c) *section 23(1) of the Code contains an over-riding requirement to disclose to the Commission any matter that might reasonably be expected to materially affect the Commission's regulation and supervision of the public fund (significant regulatory impact disclosure).*
- (ii) *It follows that compliance with the fourth principle requires a public fund not just to respond to specific requirements in SIBA, the MFR and the Code, but also to be proactive in supplying the Commission with information.*
 - (iii) *Section 24 of the Code provides that a public fund shall use its best endeavours to ensure that all information and documents that it provides to the Commission are accurate and complete. This requirement is in addition to specific offence provisions created by the FSC Act and other regulatory enactments. See, for example, section 53(1) of the FSC Act which provides that a person commits an offence if, with intent to deceive or injure another, or for any purpose of the Act, the person makes any representation or submits any information which he or she knows to be false or does not believe to be true.*

Significant Regulatory Impact Disclosure

- (iv) *A disclosure under section 23 is triggered by any matter that might reasonably be expected to have a significant regulatory impact. Underlying this requirement is an expectation that matters will be disclosed if there is a reasonable prospect that—*
 - (a) *a potential outcome will have a significant regulatory impact, if it occurs; and*
 - (b) *the outcome will occur.*

It is recognised that what might constitute “a significant regulatory impact” is not necessarily capable of exhaustive definition and proper judgment will have to be exercised. Section 23(2) outlines some broad elements of what the Commission would consider as constituting significant regulatory impact and would therefore be required to be disclosed. These elements do not exclude other essential elements or factors that might arise in relation to the public fund's affairs and business which prudence dictates should be disclosed as having significant regulatory impact. Where in any case a public fund is not certain as to whether a particular element or factor might constitute a significant regulatory impact, it should make a disclosure.

- (v) *However, the Commission expects every public fund to exercise proper judgment and not to disclose matters that are clearly not of a serious nature. A plethora of disclosures of a minor nature would not assist the Commission in exercising its objectives. In determining whether to make a significant regulatory impact disclosure, a public fund should, therefore, consider both the probability of an outcome occurring and the potential severity of the outcome.*
- (vi) *Where a disclosure has been considered, but not made, the Commission will expect a public fund to be able to demonstrate from its written records that all relevant information and matters have been fully considered and that there are reasonable*

grounds for the decision not to make a disclosure. The reasons for each decision should, therefore, be properly recorded.

Event-triggered Disclosures

(vii) *Section 25 and Schedule 2 together set out requirements for the notification of certain specific events and changes to the Commission. These notifications must always be in writing. However, in cases of urgency, notification may be made to the appropriate member of the Commission's regulatory staff by telephone, or even by a director of the public fund in person, provided that this is followed as soon as possible with a written notification.*

(viii) *In addition, SIBA and the MFR contain specific requirements for notifying events and changes to the Commission, usually in writing.*

In many cases, failure to comply with a notification requirement in a regulatory enactment is an offence.

(ix) *Where a notification requirement under SIBA, the MFR or the Code are substantively the same, the Commission does not expect a public fund to submit two separate notices to it.*

(x) *Section 25(3)(d) provides that a public fund shall not, without giving the Commission reasonable prior written notice, cause or permit a change in its authorised representative. Section 65(4) of SIBA provides (in relation to a public fund) that where the authorised representative of the fund resigns or his or her appointment is terminated or becomes vacant for any reason, the fund does not commit an offence if it appoints another authorised representative within 21 days of the date of the previous authorised representative ceasing to act.*

(xi) *A public fund should ensure that, in order to ensure compliance with SIBA and the Code, where an authorised representative ceases to act, it gives reasonable prior notice to the Commission of the appointment of a new authorised representative, before the expiry of the 21 day period specified in SIBA.*

Disclosure to Investors

Changes to investor rights

26. (1) Where a public fund proposes to make any changes to the rights of investors which the investors are not required to approve, the fund shall give each investor notice of the change.

(2) Wherever practicable, notice under subsection (1) shall be given prior to the change.

SCHEDULE 1

(Section 6(1))

**INFORMATION TO BE CONTAINED IN
PROSPECTUS OF A PUBLIC FUND**

The Manager

1. The following particulars shall be stated in respect of the manager—
 - (a) its name;
 - (b) the nature of its corporate form;
 - (c) the country of its incorporation or formation;
 - (d) if it is a part of a group, general details of the group;
 - (e) the address of the manager's principal place of business;
 - (f) the date of its incorporation;
 - (g) if the duration of its corporate status is limited, when that status will or may cease;
 - (h) the main business of the manager and a brief description of the manager's relevant experience; and
 - (i) whether the manager is licensed to carry on fund management business in the Virgin Islands or, if not, whether the manager is authorised to conduct fund management business elsewhere, and if so the country in which it is authorised and the name of the relevant supervisory body.

The Administrator

2. The following particulars shall be stated in respect of the administrator—
 - (a) its name;
 - (b) the nature of its corporate form;
 - (c) the country of its incorporation;
 - (d) if it is a part of a group, general details of the group;
 - (e) the address of the administrator's principal place of business;
 - (f) the date of its incorporation;
 - (g) if the duration of its corporate status is limited, when that status will or may cease;
 - (h) the main business of the administrator and a brief description of the administrator's experience; and
 - (i) whether the administrator is licensed to carry on fund administration business in the Virgin Islands or, if not, whether the administrator is authorised to conduct fund administration business elsewhere, and if so the country in which it is authorised and the name of the relevant supervisory body.

The Custodian

3. The following particulars shall be stated in respect of the custodian—
- (a) its name;
 - (b) the nature of its corporate form;
 - (c) the country of its incorporation;
 - (d) if it is a part of a group, general details of the group;
 - (e) the address of the custodian's principal place of business;
 - (f) a description of the custodian's principal business activity; and
 - (g) whether it is authorised to carry on business as a custodian in any country and, if so, the name of the country and the name of the relevant supervisory body.

The Prime Broker

4. The following particulars shall be stated in respect of any prime broker to be employed by the fund—
- (a) its name;
 - (b) the nature of its corporate form;
 - (c) the country of its incorporation;
 - (d) if it is a part of a group, general details of the group;
 - (e) the address of the prime broker's principal place of business; and
 - (f) whether the prime broker is authorised to carry on business as a prime broker in any country and, if so, the name of the country and the name of the relevant supervisory body.

The Investment Adviser

5. If the manager of the fund or the fund employs the services of an investment adviser to manage any of the fund property or to supply investment advice in relation to the fund, the following particulars shall be stated in respect of the investment adviser—
- (a) its name;
 - (b) the nature of its corporate form;
 - (c) the country of its incorporation;
 - (d) if it is a part of a group, general details of the group;
 - (e) the address of the investment adviser's principal place of business;
 - (f) the date of its incorporation;
 - (g) if the duration of its corporate status is limited, when that status will or may cease;
 - (h) the main business of the investment advisor and a brief description of the investment advisor's relevant experience;

- (i) if the investment adviser is licensed to carry on investment advisory business in a country other than the Virgin Islands, that fact and the name of the relevant supervisory body;
- (j) a summary of the agreement between the investment adviser and the manager (other than provisions relating to its remuneration) and, if it has the authority of the manager to make decisions on behalf of the manager, that fact and a description of the matters in relation to which it has authority; and
- (k) if the investment adviser is authorised to deal on behalf of the fund and is an associate of the manager, the relationship by virtue of which it is an associate and the maximum percentage commission payable to it under the agreement or arrangement in paragraph (j) for any transaction done or which could be done on behalf of the fund.

Other Relevant Persons

6. The name and address of the following shall be stated—

- (a) the fund's registrar;
- (b) the fund's transfer agent;
- (c) the fund's auditor;
- (d) the fund's legal advisors;
- (e) the fund's authorised representative; and
- (f) the fund's promoter.

The Directors

7. The names and relevant qualifications and experience of the directors of the fund shall be stated.

The Constitution and Objectives of the Fund

8. The following shall be stated—

- (a) the name of the fund;
- (b) the date on which and the jurisdiction in which the fund was incorporated, formed or registered;
- (c) whether the vehicle is a company, and if so what type of company, or a unit trust;
- (d) if the fund is a segregated portfolio company within the meaning of the BVI Business Company Act, a statement to that effect;
- (e) in the case of a property fund, the maximum extent to which the fund property may be invested in immovables and related assets;
- (f) the circumstances in which the winding-up of the fund can be decided upon, a description of the procedure to be followed in a winding-up and what the rights of investors will be in a winding-up;
- (g) the date of the fund's financial year end; and
- (h) if there are interim accounting periods, what they are.

The Characteristics of Fund Interests in the Fund

9. The following shall be stated—

- (a) in relation to each available class of fund interest in the fund, the entitlement of the investor to participate in the fund property and the income of the fund, a statement of the nominal value (if any) of each fund interest and, where there is more than one class of fund interest, the names or designations given to each class and characteristics of each class which distinguishes it from the others;
- (b) the nature of the right represented by the fund interests in the fund; and
- (c) the voting rights attached to the fund interests or to classes of fund interest, if appropriate, and whether persons other than investors can vote at meetings of investors and who those persons are.

The Characteristics of the Fund

10. The following shall be stated—

- (a) that the fund is a registered public fund;
- (b) if the fund is a feeder fund, the name of the fund into which the fund is to feed;
- (c) if the fund is a fund of funds, that fact;
- (d) if the fund is an umbrella fund, that fact and details of the individual funds constituting the umbrella fund;
- (e) the date on which the fund was established and, if the duration of the fund is not unlimited, when it will or may terminate;
- (f) particulars of the capital structure of the fund;
- (g) sufficient information to enable an investor to ascertain—
 - (i) the objective of the fund; and
 - (ii) the manager's investment policy for achieving that objective;
- (h) if the manager's investment policy does not envisage remaining fully invested at all times, a statement of the manager's policy in that respect;
- (i) the general nature of the portfolio and any intended specialisation (for example, in an economic sector, geographical area or type of investment or other asset);
- (j) a clear and easily understandable explanation of any risks associated with an investment in the fund of which a reasonably prudent investor would want to be aware, including any particular risk factors inherent in the fund's objectives, portfolio or intended portfolio;
- (k) the risks of default or breach associated with the legal structure of the fund, i.e. as a company or as a unit trust;
- (l) a description of the type of asset which may be included in the fund property and any limitations on the extent to which the fund may invest in such asset;

- (m) where the fund's ability to invest in a particular type of asset or to a particular extent is provided by the instrument constituting the fund, that fact;
- (n) a statement of what borrowing powers are exercisable in relation to the fund;
- (o) in the case of a fund which may invest in other public funds, the extent to which the fund property may be invested in the fund interests of public funds which are managed by the manager or by an associate of the manager;
- (p) a statement of any material conflicts of interest, including conflicts of interest between functionaries and the fund, between the functionaries, between the governing body and the fund and between the functionaries, governing body, fund and investors;
- (q) a statement as to the potential risks associated with any conflicts of interest identified in accordance with paragraph (p); and
- (r) how it is proposed that the conflicts of interest identified will be managed.

Valuation of Fund Property and Fund Interests

11. The following shall be stated—

- (a) the person or persons who are responsible for undertaking valuations of the fund property, preparing NAVs and valuing the fund interests, and where the valuations will be undertaken;
- (b) how frequently (in days), and what time or times of day, the fund property and the fund interests will be valued, and a description of any circumstances in which the fund property and the fund interests may be specially valued;
- (c) the basis on which the fund property will be valued, including the methodology and procedures for undertaking the valuation;
- (d) an indication of the circumstances in which a valuation can be suspended;
- (e) the person or persons who have oversight responsibility for the valuation of the fund property and the preparation of NAVs;
- (f) a description of any material conflicts of interest associated with the parties concerned with the valuation process, including whether the fund manager has any role in the valuation of the fund property;
- (g) that full details of the fund's valuation policies are contained in a written valuation policy, indicating how a copy may be obtained; and
- (h) other information concerning the valuation process that is available to investors on request, and how this may be obtained.

Fees

12. The prospectus shall state—

- (a) if the price at which fund interests may be purchased from the fund may include an initial fee charged by the manager, the maximum amount of that fee, expressed either as a fixed amount in the base currency or as a percentage of the net asset value of those fund interests;

- (b) if the manager may charge an annual fee out of the fund property—
 - (i) the maximum amount of that fee, expressed as an annual percentage of the net asset value of the fund; and
 - (ii) if the fund and the manager have agreed that all or part of that fee is to be treated as a capital charge—
 - (A) that fact; and
 - (B) the actual or maximum amount of the fee which may be so treated;
- (c) if the manager may charge a performance or incentive fee out of the fund property—
 - (i) that fact;
 - (ii) the basis of calculation of that fee; and
 - (iii) when and how that fee is to be charged;
- (d) if the manager may charge a fee by way of deduction from the proceeds of redemption—
 - (i) the amount of that fee or, if it is variable, the rate or method of calculating the fee; and
 - (ii) if the amount or rate or method has been changed, that details of any previous amount or rate or method may be obtained from the manager on request;
- (e) where the fund is a unit trust, if the trustee is to be remunerated out of the fund property, that fact that remuneration will be paid out of the fund property and the basis for the remuneration;
- (f) where the fund is a BVI business company, the remuneration and expenses of the directors; and
- (g) the nature of any other payments which may lawfully be made out of the fund property and how their amounts will be determined, including, inter alia, custodian fees, administration fees, registrar and transfer agency fees and fees payable to any investment advisor.

Distribution of Income

13. State the annual distribution date and, if any, the interim distribution dates.

The Issue and Redemption of Fund Interests

14. State—

- (a) the dealing days and times in the dealing day on which the fund will be available to receive requests for the issue and redemption of fund interests;
- (b) the procedures for effecting the issue and redemption of fund interests and the settlement of transactions;
- (c) the steps required to be taken by an investor redeeming fund interests before he or she can receive the proceeds of redemption;

- (d) the amounts of the following minima (if relevant) for each class of fund interest in the fund—
 - (i) the minimum number of fund interests which any one person may hold;
 - (ii) the minimum value of fund interests which any one person may hold;
 - (iii) the minimum number or value of fund interests which may be the subject of any one transaction of purchase; and
 - (iv) the minimum number of fund interests which may be the subject of any one act of redemption;
- (e) the circumstances in which the redemption of fund interests may be suspended;
- (f) where and when the most recent issue and redemption prices will be published; and
- (g) the investment exchanges, if any, on which fund interests are listed or dealt.

General Information

15. State—

- (a) the date when the prospectus was issued and the date of each amendment;
- (b) when annual and half-yearly reports will be published and the address at which these will be available;
- (c) the address at which copies of the constituting documents of the fund, any amending instrument and of the most recent annual and half-yearly reports may be inspected and from which copies of them may be obtained;
- (d) the address at which copies of the prospectus and all material contracts may be obtained; and
- (e) that, if a fund publishes a prospectus or any amendment thereto that contains misrepresentation relating to any of the disclosures required under section 48(1)(b) of the Act, a person who purchased any fund interests pursuant to such prospectus or amendment thereto is deemed to have relied upon the misrepresentation and shall have the rights provided in section 52 of the Act, namely, to exercise a right of action for—
 - (i) the rescission of the purchase; or
 - (ii) damages,

jointly and severally against the fund and every member of the board of directors or, in the case of a partnership, unit trust or other similar body, every member of the equivalent governing body who, while aware of the misrepresentation, or would have been aware of the misrepresentation had he or she made reasonable investigation consistent with his or her duties, authorised the signing of or approved the prospectus or amendment thereto and consented to its publication and filing or caused it to be signed or published and filed.

Additional Information

16. State any other material information which—

- (a) investors and their professional advisers would reasonably require, and reasonably expect to find in the fund prospectus, for the purpose of making an informed judgment about the merits of investing in the fund and the extent of the risks accepted by so investing; and
- (b) is within the knowledge of the fund or which the fund would have obtained by the making of reasonable enquiries.

Umbrella Funds

17. (1) State, in the case of an umbrella fund—

- (a) that in no circumstances will a holder who exchanges rights or fund interests in one part of the fund for rights or fund interests in another part of the fund be given a right by law to withdraw from or cancel the transaction; and
- (b) what arrangements there are for charges in the case of an exchange of fund interests in one sub-fund for fund interests in another, including the maximum amount of the charge and the minimum number of exchanges that will be permitted free of charge.

(2) In the application of this Schedule to an umbrella fund, information required shall be stated—

- (a) in relation to each class or sub-fund of the fund where the information for any class or sub-fund of the fund differs from that for any other class or sub-fund; and
- (b) for the fund as a whole, but only where the information is meaningful in relation to the fund as a whole.

SCHEDULE 2

(Section 25)

EVENTS AND CHANGES TO BE NOTIFIED TO THE COMMISSION

<i>Event</i>	<i>Time Limit for Notification</i>
1. Application being made to the Court for the appointment of a liquidator or administrator of the public fund under the Insolvency Act	Immediate
2. A meeting being called to consider the appointment of a liquidator under section 159(2) of the Insolvency Act	Immediate
3. A proposal being made for a creditors' arrangement under the Insolvency Act	Immediate

4.	The making of, or any proposals for the making of, a composition or arrangement with one or more creditors of the public fund other than a creditors' arrangement as referred to in event 3.	Immediate
5.	The striking of the public fund off the register of companies maintained by the Registrar of Corporate Affairs under the BVI Business Companies Act	Immediate
	<i>Event</i>	<i>Time Limit for Notification</i>
7.	Anything equivalent to events 1 to 6 occurring in a jurisdiction outside the Virgin Islands	Immediate
8.	The bringing of civil proceedings against the public fund where the size of the claim is significant with respect to the fund property or is likely to affect the public fund's reputation	Immediate
9.	The commencement of an investigation with respect to the business or affairs of the public fund by any overseas regulatory authority	Immediate
10.	The taking of any enforcement action against the public fund by a foreign regulatory authority	Immediate
11.	The prosecution or conviction of the public fund, or any of its directors, in or outside the Virgin Islands for any offence— (a) relating to financial services; or (b) involving fraud or dishonesty	Immediate
12.	The public fund becomes aware of any fraud committed against it.	Immediate
13.	Any matter that the public fund considers to be material to the fit and properness of any of its directors or functionaries	Immediate
14.	Any significant failure in the public fund's procedures	Immediate
15.	Any material change to investors' rights	Within a reasonable time period prior to the proposed change

16. Any proposed significant restructuring or reorganisation of the public fund or its regulated business or activities

Within a reasonable time prior to the proposed restructuring or reorganisation taking effect.

**SECURITIES AND INVESTMENT BUSINESS
(INCUBATOR AND APPROVED FUNDS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Application as an incubator fund or approved fund
4. Investment warning
5. Deemed approval of an incubator fund and approved fund
6. Power to extend period of completion of application
7. Fees
8. Obligation to report change of information or circumstance
9. Obligations of incubator fund and approved fund
10. Restrictions in relation to investments: incubator fund
11. Restrictions in relation to investments: approved fund
12. Forced conversion or liquidation
13. Validity period of an incubator fund and approved fund
14. Conversion of incubator fund
15. Conditions for conversion of incubator fund
16. Exemption where incubator fund converts
17. Requirement re submission of financial statements
18. Filing returns
19. Register of incubator funds and approved funds

**SECURITIES AND INVESTMENT BUSINESS
(INCUBATOR AND APPROVED FUNDS) REGULATIONS –
SECTIONS 40C(1) AND 62A
(S.I.s 35/2015 and 83/2019)**

Commencement

[1 June 2015]

Citation

1. These Regulations may be cited as the Securities and Investment Business (Incubator and Approved Funds) Regulations.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act;

“applicant” means a person who has applied to the Commission to be approved as an incubator fund or approved fund;

“approved fund” means a fund that is deemed as such under regulation 5(1)(b) and satisfies the requirements of regulation 11(1) and (2);

“Commission” means the Financial Services Commission established under 3(1) of the Financial Services Commission Act;

“fund property”, in relation to an incubator fund or approved fund, means the assets of the fund; *(Inserted by S.I. 83/2019)*

“incubator fund” means a fund that is deemed as such under regulation 5(1)(a) and satisfies the requirements of regulation 10(1) and (2);

“offering document” means a document that contains an invitation or offer to investors or potential investors to purchase or subscribe for fund interests in an incubator fund or approved fund, and includes an amended offering document and a term sheet as may be prescribed;

“prescribed” means prescribed by the Commission;

“private fund” has the meaning assigned under section 40(1) of the Act;

“professional fund” has the meaning assigned under section 40(1) of the Act; and

“sophisticated private investor” means a person who is invited to invest in an incubator fund and the amount of his or her initial investment is not less than \$20,000.

(2) Nothing contained in these Regulations shall be construed as preventing a mutual fund from applying to be recognised as a private fund or professional fund under the Act, but a mutual fund shall not be recognised as a private fund or professional fund while it is approved as an incubator fund or approved fund under these Regulations.

Application as an incubator fund or approved fund

3. (1) A person who wishes to be considered for approval as an incubator fund or approved fund may submit an application to the Commission in the prescribed form.

- (2) For purposes of subregulation (1), an applicant shall, in submitting an application, provide the following information—
- (a) the constitutional documents specifying whether the applicant intends to be an incubator fund or approved fund;
 - (b) a written description of the investment strategy of the proposed incubator fund or approved fund;
 - (c) a written warning which the incubator fund or approved fund will issue to investors or potential investors as provided in regulation 4; and
 - (d) such other information as may be required in the prescribed form.
- (3) For the purposes of this regulation, an application is not complete if—
- (a) it does not satisfy all the requirements of this regulation; and
 - (b) the application is not accompanied by the fee required pursuant to regulation 7.

Investment warning

4. (1) No offer or invitation shall be made to an investor or potential investor to purchase or subscribe for fund interests in an incubator fund or approved fund, unless the investor or potential investor is provided with a written warning in accordance with this regulation.

- (2) Where an incubator fund or approved fund—
- (a) issues an offering document, the written warning shall be included in a prominent place in the offering document; or
 - (b) does not issue an offering document, the written warning shall be provided to each investor or potential investor as a separate document.
- (3) The written warning required to be provided to an investor or potential investor shall clearly indicate that the incubator fund or approved fund, as the case may be, has been established as such and that—
- (a) in the case of an incubator fund—
 - (i) the fund is suitable for sophisticated private investors only;
 - (ii) the total number of investors in the fund is limited to a maximum of 20; and
 - (iii) the fund can only have investments not exceeding \$20,000,000 in net assets or its equivalence in any other currency;
 - (b) in the case of an approved fund—
 - (i) the total number of investors in the fund is limited to a maximum of 20; and
 - (ii) the fund can only have investments not exceeding \$100,000,000 in net assets or its equivalence in any other currency;

- (c) the incubator fund or approved fund, as the case may be, is not subject to supervision by the Commission and that requirements considered necessary for the protection of investors that apply to public funds do not apply to an incubator fund or approved fund;
- (d) an investor in an incubator fund or approved fund is solely responsible for determining whether the fund is suitable for his or her investment needs;
- (e) by reason of the above, investment in an incubator fund or approved fund may present a greater risk to an investor than investment in a public fund; and
- (f) in the case of an incubator fund, the fund is limited to an approved period of 2 years only (with a possible extension for an additional 12 months upon application to the Commission pursuant to regulation 13 (3)) and may thereafter, unless it decides to terminate its business as such fund, apply to the Commission to be recognised as a private fund or professional fund or to be approved as an approved fund.

Valuation of fund property

4A. (1) An incubator fund and approved fund shall maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented.

(2) An approved fund and incubator fund shall ensure that fund property is valued in accordance with the valuation policy.

(3) The valuation policy and procedures of an incubator fund and approved fund shall—

- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
- (b) be consistent with the provisions concerning valuation in its constitutional documents and offering document;
- (c) require valuations to be undertaken at least on an annual basis;
- (d) include procedures for preparing reports on the valuation of fund property; and
- (e) specify the mechanisms in place for disseminating valuation information and reports to investors.

(4) Subject to sub-regulation (5), an incubator fund and approved fund shall ensure that the persons controlling the fund's investment function, are independent from the persons controlling the fund's the valuation process.

(5) Where an incubator fund or approved fund determines that the person responsible for the fund's investment function must have an involvement in the valuation of fund property, the incubator fund or approved fund shall—

- (a) identify, manage and monitor any potential conflicts of interest that may arise; and
- (b) disclose to investors in the fund—

- (i) that the person responsible for the fund's investment function has an involvement in the valuation of fund property; and
- (ii) details of how any potential conflicts of interest will be managed.

(Inserted by S.I. 83/2019)

Deemed approval of an incubator fund and approved fund

5. (1) Subject to this regulation and regulation 7, an applicant that submits a complete application as required under regulation 3—

- (a) shall, in the case of an application for an incubator fund, be deemed to be an incubator fund;
- (b) shall, in the case of an application for an approved fund, be deemed to be an approved fund; and
- (c) may, subject to compliance with any advice given by the Commission under subregulation (2), commence business after a period of 2 business days from the date of receipt of the application by the Commission.

(2) Where the Commission receives an application under regulation 3 which it considers not to be complete, it shall, within a period of 2 business days after the receipt of the application, advise the applicant of that fact and outline the requirements that need to be satisfied to make the application complete.

(3) Subject to regulation 6, where the Commission does not receive a complete application within 7 days or, if an extension has been granted pursuant to regulation 6, within the period of extension, after advising the applicant under subregulation (2), the application shall be considered abandoned and no further action may be taken in respect thereof.

(4) For the purpose of subregulation (1)(c), an application is received by the Commission if it is properly addressed to the Commission and if—

- (a) sent by post, it is received in the ordinary course of post;
- (b) delivered directly to the Commission, when it is physically received by an officer of the Commission, whether or not receipt of the application has been signed or stamped; and
- (c) sent by electronic means, when the application is shown to have been sent electronically to the correct address.

(5) Where a fund is deemed to be an incubator fund or approved fund under subregulation (1), the Commission shall issue a certificate evidencing the status of the fund upon payment of the fee prescribed in accordance with section 62 of the Financial Services Commission Act, 2001.

(6) For the purposes of subregulations (1)(c) and (2), “business days” means any day other than a Saturday, Sunday or public holiday in the Virgin Islands.

Power to extend period of completion of application

6. The Commission may, on the written request of an applicant, extend the period specified in regulation 5(3) for an additional period not exceeding 7 days.

Fees

7. (1) Every application for the approval of an incubator fund or approved fund shall be accompanied by such fees as may be prescribed in accordance with section 62 of the Financial Services Commission Act.

(2) The continued approval of an incubator fund or approved fund may, subject to compliance with regulations 8 to 11 and 13, be renewed upon payment of the fee prescribed in accordance with section 62 of the Financial Services Commission Act.

(3) Where an incubator fund or approved fund fails to pay its renewal fee referred to in subregulation (2) after the renewal has become due and payable, the incubator fund or approved fund, as the case may be, shall be liable to the penalty of \$50 for each day that the renewal fee remains unpaid, up to maximum of \$2,000. (*Amended by S.I. 83/2019, with effect from 1 April, 2020*)

Obligation to report change of information or circumstance

8. (1) Where, in relation to an incubator fund or approved fund, any information provided under regulation 3 changes, the fund shall, within 14 days of the change occurring, notify the Commission in writing of that fact.

(2) A notification under subregulation (1) shall provide details of the change and shall be accompanied by a written declaration in the prescribed form as to whether or not the change complies with the requirements of these Regulations.

(3) In addition to notifying the Commission of any change under subregulation (1), an incubator fund or approved fund, as the case may be, shall notify the Commission of any matter in relation to the affairs (including the conduct of business) of the incubator fund or approved fund which has or is likely to have a material impact with respect to the incubator fund or approved fund.

Obligations of incubator fund and approved fund

9. (1) An incubator fund and approved fund shall at all times—

- (a) have an authorised representative in the Virgin Islands; (*Amended by S.I. 83/2019*)
- (b) have no less than 2 directors, at least one of whom shall be an individual; and (*Amended by S.I. 83/2019*)
- (c) have arrangements in place for the safekeeping of fund property, which include provisions for the appropriate segregation of fund property. (*Inserted by S.I. 83/2019*)

(2) In addition to the requirements of subregulation (1), an approved fund shall at all times have an administrator.

(3) Where the number of directors of an incubator fund or approved fund falls below 2, the incubator fund or approved fund, as the case may be, shall—

- (a) immediately notify the Commission of that fact in writing; and
- (b) take necessary steps to bring the number of directors to the requirement of subregulation (1)(c) within a period of 21 days from the date when that requirement was not complied with.

(4) Where the authorised representative of an incubator fund or approved fund ceases to represent the incubator fund or approved fund, as the case may be, the incubator fund or approved fund shall immediately notify the Commission in writing of that fact and take necessary steps to replace the authorised representative within a period of 21 days from the date the authorised representative ceased to represent the incubator fund or approved fund.

(5) Where there is a change in the administrator of an approved fund, the approved fund shall immediately notify the Commission in writing of that change.

Restrictions in relation to investments: incubator fund

10. (1) Investment in an incubator fund is restricted to sophisticated private investors only and the fund shall not have investments that exceed \$20,000,000 in net assets or its equivalence in any other currency.

(2) The total number of investors in an incubator fund at any one time shall not exceed 20.

(3) Where the amount of the investments or the total number of investors exceeds the threshold prescribed in subregulation (1) or (2) respectively over a period of two consecutive months, the incubator fund shall, within 7 days of the end of the second month—

- (a) notify the Commission in writing of that fact outlining the reasons therefor; and
- (b) submit an application to the Commission for the conversion and recognition of the fund as—
 - (i) a private fund or professional fund in accordance with the provisions of the Act and the Mutual Funds Regulations; or
 - (ii) an approved fund in accordance with the provisions of these Regulations,unless if, at the time of notification, the incubator fund no longer exceeds the amount of the investments or the total number of investors; or
- (c) commence the process of voluntary liquidation of the fund under the BVI Business Companies Act or take necessary steps to amend its constitutional documents so as to cease to be a mutual fund as defined in section 40(1) of the Act and to remove any reference to it being an incubator fund.

(4) Where an incubator fund amends its constitutional documents under subregulation (3)(c), it shall cease to function as an incubator fund on the date of the filing of the amended constitutional documents or, if there is an effective date in relation to the filing, on the date the filing becomes effective.

Restrictions in relation to investments: approved fund

11. (1) An approved fund shall not have investments that exceed \$100,000,000 in net assets or its equivalence in any other currency.

(2) The total number of investors in an approved fund at any one time shall not exceed 20.

(3) Where the amount of the investments or the total number of investors exceeds what is prescribed in subregulation (1) or (2) respectively over a period of two consecutive months, the approved fund shall, within 7 days of the end of the second month—

- (a) notify the Commission in writing of that fact outlining the reasons therefor; and
- (b) submit an application to the Commission for the conversion and recognition of the fund as a private fund or professional fund in accordance with the provisions of the Act and the Mutual Funds Regulations, unless if, at the time of notification, the approved fund no longer exceeds the amount of the investments or the total number of investors; or
- (c) commence the process of voluntary liquidation of the fund under the BVI Business Companies Act or take necessary steps to amend its constitutional documents so as to cease to be a mutual fund as defined in section 40(1) of the Act and to remove any reference to it being an approved fund.

(4) Where an approved fund amends its constitutional documents under subregulation (3)(c), it shall cease to function as an approved fund on the date of the filing of the amended constitutional documents or, if there is an effective date in relation to the filing, on the date the filing becomes effective.

Forced conversion or liquidation

12. (1) Where an incubator fund or approved fund exceeds the amount of investments or the total number of investors contrary to regulation 10 or 11, the Commission may direct—

- (a) in the case of the incubator fund, that the fund convert into a private fund or professional fund or into an approved fund;
- (b) in the case of the approved fund, that the fund convert into a private fund or professional fund; or
- (c) the incubator fund or approved fund, as the case may be, to—
 - (i) commence the process of voluntary liquidation of the fund in accordance with the provisions of the BVI Business Companies Act; or
 - (ii) take necessary steps to amend its constitutional documents so as to cease to be a mutual fund as defined in section 40(1) of the Act and to remove any reference to it being an incubator fund or approved fund.

(2) Where the Commission considers it to be in the public interest, it may, in relation to an incubator fund or approved fund, issue any of the directions referred to in subregulation (1).

(3) Where an incubator fund or approved fund amends its constitutional documents under subregulation (1)(c), it shall immediately cease to function as an

incubator fund or approved fund, as the case may be, on the date of the filing of the amended constitutional documents or, if there is an effective date in relation to the filing, on the date the filing becomes effective.

Validity period of an incubator fund and approved fund

13. (1) Subject to regulations 7, 10(3)(b) and (c) and 12, the period of validity of an incubator fund is 2 years.

(2) Subject to regulations 7, 11(3)(b) and (c) and 12, the validity period for an approved fund is unlimited.

(3) An incubator fund may, at least 1 month prior to the end of its period of validity, (or such shorter period as the Commission may approve) submit a written application to the Commission requesting an extension for an additional period not exceeding 12 months.

(4) Where the Commission receives an application under subregulation (3), it may grant the request for extension if it is satisfied that—

- (a) the incubator fund's investments or total number of investors do not exceed the specified threshold and the fund has complied with all of its obligations under these Regulations; and
- (b) it is not against the public interest to grant the extension.

Conversion of incubator fund

14. (1) Subject to regulation 15, an incubator fund may at least 2 months before the expiry of its period of validity referred to in regulation 13(1) (or such shorter period as the Commission may approve) submit an application to the Commission to convert into and be recognised as a private fund or professional fund or be approved as an approved fund.

(2) An application under subregulation (1) shall—

- (a) in relation to recognition as a private fund or professional fund, be made in accordance with the provisions of the Act and the Mutual Funds Regulations; and
- (b) in relation to approval as an approved fund, be made in accordance with the provisions of these Regulations.

(3) Where an incubator fund converts to an approved fund, the sophisticated private investors in the incubator fund shall, upon conversion of the fund into an approved fund, be treated like any other investor in the approved fund.

(4) Where an incubator fund intends to cease carrying on business as a mutual fund, it shall give reasonable notice to its investors advising them of its plan to cease carrying on business as a mutual fund and give them an opportunity to redeem their investments.

(5) Subregulation (4) shall not apply in the case of a liquidation of the incubator fund.

Conditions for conversion of an incubator fund

15. (1) Where an incubator fund intends to convert into a private fund or professional fund under these Regulations, it shall, at least 2 months prior to the expiry of its period of validity as referred to in regulation 13(1) (or such shorter period as the Commission may approve), prepare and submit to the Commission an audit of its—

- (a) current financial position; and
- (b) compliance with the requirements of these Regulations.

(2) The audit referred to in subregulation (1) shall be performed by either—

- (a) a person approved by the Commission under the Act or pursuant to section 56 of the Regulatory Code as an auditor; or
- (b) a person who, though not an approved auditor as referred to in paragraph (a), is independent of the incubator fund and whose normal duties include the performance of such an independent audit function.

(3) Where an audit is performed by a person referred to in subregulation (2)(b), the incubator fund shall, in submitting the audit to the Commission, provide a detailed report of the person's academic qualifications and experience outlining how the person's normal duties include the performance of an independent audit function.

(4) Where the Commission, in reviewing the audit of an incubator fund, considers a person referred to in subregulation (2)(b) not to be sufficiently independent of the incubator fund or not to have the necessary qualifications to perform the audit function, it may require the incubator fund to appoint an approved auditor to perform the required audit function.

(5) For the avoidance of doubt, the reference to "audit" in subregulation (1) in relation to an incubator fund's—

- (a) financial position, relates to an independent determination of the status of the fund's finances as at the date the audit is carried out and shall not be construed to require the fund to provide audited financial statements; and
- (b) compliance with the requirements of these Regulations, relates to an independent determination of the level of compliance by the fund of its obligations under these Regulations as at the date of the audit.

Exemption where incubator fund converts

16. Where an incubator fund converts into a professional fund under the Act pursuant to regulation 14, the restrictions provided in regulation 5(1) and (2) of the Mutual Funds Regulations shall not apply in respect of a sophisticated private investor whose investment in the incubator fund on the date of conversion is less than the amounts stipulated in regulation 5(1) and (2) of those Regulations.

Requirement re submission of financial statements

17. (1) Subject to subregulation (2), an incubator fund and approved fund are required to prepare and submit financial statements in accordance with the Act and shall, for that purpose, be treated as if each were a relevant licensee under Part IV of the Act.

(2) Sections 71, 75, 76, 77, 78, and 79(2) of the Act are disappplied with respect to an incubator fund and approved fund, and the Regulatory Code and paragraph 2 (1) (e) of Schedule 5 of the Financial Services (Miscellaneous Exemptions) Regulations are modified accordingly.

(3) The reference to “financial statements” in subregulation (1) means a statement of the financial position of the incubator fund or approved fund, as the case may be.

Filing returns

18. (1) An incubator fund shall—

- (a) no later than the 31st day of July and 31st day of January of each year, prepare and submit to the Commission a semi-annual report for the periods ending 30th June and 31st December respectively, detailing—
 - (i) the number of investors in the fund;
 - (ii) the total investments in the fund;
 - (iii) the aggregate subscriptions to the fund;
 - (iv) the aggregate redemptions paid to investors;
 - (v) the net asset value of the fund; and
 - (vi) any significant investor complaint received by the fund and how the complaint was dealt with; and
- (b) no later than the 31st day of January of each year, file with the Commission a return in the prescribed form—
 - (i) stating that it is not in breach of the requirements of these Regulations that entitle it to continue as an incubator fund or approved fund; and
 - (ii) providing such other information as may be required in the prescribed form.

(2) An approved fund shall, no later than the 31st day of January of each year, file a return with the Commission in the prescribed form—

- (a) stating that it is not in breach of the requirements of these Regulations that entitle it to continue as an approved fund;
- (b) outlining any significant investor complaint received by the fund and how the complaint was dealt with;
- (c) providing such other information as may be required in the prescribed form; and
- (d) providing, as at the 31st day of December of the preceding year, details of—
 - (i) the number of investors in the fund;
 - (ii) the total investments in the fund;
 - (iii) the aggregate subscriptions to the fund;

- (iv) the aggregate redemptions paid to investors; and
- (v) the net asset value of the fund.

(3) Where the Commission is required or considers it necessary to comply with any reporting obligation, whether under an enactment or otherwise, it may require an incubator fund or approved fund to provide the Commission with such further information as the Commission may consider fit.

(4) Any information required by the Commission under subregulation (3) shall be in such form and provided within such period as the Commission may determine.

(5) For the purposes of subregulations (1)(a)(vi) and (2)(b), what constitutes a significant investor complaint shall be construed in accordance with section 69B of the Regulatory Code.

Register of incubator funds and approved funds

19. (1) The Commission shall keep and maintain a register of incubator funds and approved funds under these Regulations.

- (2) The register kept and maintained under subregulation (1)—
 - (a) may be in such form and published in such manner and for such period as the Commission considers fit; and
 - (b) shall be open to the public for inspection, and any person may request and obtain an extract from the register.

Transitional provisions

20. The transitional provisions specified in the Schedule shall have effect.
(Inserted by S.I. 83/2019)

SCHEDULE

(Regulation 20)

Interpretation

1. In this Schedule “existing incubator fund or approved fund” means a mutual fund that, immediately prior to the coming into force of these Regulations (“Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019), was an incubator fund or approved fund.

Effective Date

2. Subject to paragraph 3, the provisions of the Mutual Funds (Amendment) Regulations, 2019 shall take effect in relation to an existing incubator fund or approved fund on 1st July 2020.

Penalty Fees

3. The maximum penalty amount prescribed in regulation 4 of these Regulations shall in relation to an existing incubator fund or approved fund, apply with effect from 1st April 2020.

(Inserted by S.I. 83/2019)

**SECURITIES AND INVESTMENT BUSINESS
(RECOGNISED JURISDICTIONS) NOTICE – SECTION 40(4)**

(S.I.s 29/2010 and 83/2010)

Commencement

[17 May 2010]

Short title

1. This Notice may be cited as the Securities and Investment Business (Recognised Jurisdictions) Notice.

Recognised Jurisdiction

2. For the purposes of the application of the Securities and Investment Business Act, and paragraph 3, the jurisdictions listed in the Schedule are recognised by the Financial Services Commission.

Recognition and acceptance of functionaries

3. (1) The Commission may, subject to the Securities and Investment Business Act, recognise and accept any functionary of a fund that is established and located in a jurisdiction listed in the Schedule.

(2) Where a functionary of a fund is not established and located in a jurisdiction listed in the Schedule, the Commission may recognise and accept the functionary, if satisfied, upon application, that the functionary's jurisdiction of establishment and location has a system for the effective regulation of investment business, including funds.

SCHEDULE**RECOGNISED JURISDICTIONS**

Argentina	Germany	Netherlands
Australia	Gibraltar	New Zealand
Bahamas	Greece	Norway
Belgium	Guernsey	Panama
Bermuda	Hong Kong	Portugal
Brazil	Ireland	Singapore
Canada	Isle of Man	Spain
Cayman Islands	Italy	South Africa
Chile	Japan	Sweden
China	Jersey	Switzerland
Curacao	Luxembourg	United Kingdom
Denmark	Malta	United States of America
Finland	Mexico	
France		

(Amended by S.I. 83/2010)
