

**SEGREGATED PORTFOLIO COMPANIES
(MUTUAL FUNDS) REGULATIONS**

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SCHEDULE: Fees Payable by a Segregated Portfolio Company

**SEGREGATED PORTFOLIO COMPANIES
(MUTUAL FUNDS) REGULATIONS - SECTION 159**

(S.I.s 4/2018 and 48/2018)

Commencement

[3 August 2018]

Short title

1. These Regulations may be cited as the Segregated Portfolio Companies (Mutual Funds) Regulations.

Definitions

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

“Act” means the Securities and Investment Business Act;

“Court” means the High Court;

“functionary”, with respect to a mutual fund, means a manager, administrator, investment advisor, custodian or any other person whom the Commission may, by an Order published in the *Gazette* or the Internet site, specify;

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

“Internet site”, in relation to the Commission, means the principal public access Internet site for the time being maintained by, or on behalf of, the Commission;

“mutual fund” bears the meaning specified in section 40(1) of the Act; and

“mutual fund SPC” means a segregated portfolio company that is a mutual fund.

(2) A reference in these Regulations to the imposition by the Commission of an administrative penalty refers to the imposition of administrative penalty pursuant to the Financial Services (Administrative Penalties) Regulations.

Application for approval to incorporate or register a mutual fund SPC

3. (1) Any person who wishes to incorporate or register a company as a segregated portfolio company that is, or that will on its incorporation be, a mutual fund, shall submit an application to the Commission in the approved form.

(2) An application under subregulation (1) shall include the following information—

- (a) the name, or proposed name, of the segregated portfolio company;
- (b) details of the person who is, or who will be appointed as, the administrator of the segregated portfolio company;
- (c) a list of the initial segregated portfolios that it is intended will be created, including the name, identification or designation of each segregated portfolio; and

- (d) in respect of each of the initial segregated portfolios that it is intended will be created, details of the functionary who will be appointed by the segregated portfolio company to act in respect of the portfolio.
- (3) An application under subregulation (1) shall be accompanied by—
- (a) in the case of a private or professional fund or a public fund, an application under the Act for the recognition of the segregated portfolio company as a private or professional fund or for the registration of the segregated portfolio company as a public fund;
- (b) in the case of an incubator fund or approved fund, an application under the Securities and Investment Business (Incubator and Approved Funds) Regulations for the approval of the segregated portfolio company as an incubator fund or approved fund;
- (c) subject to subregulation (4)—
- (i) the documents required by the Act to accompany such an application, in the case of a private, professional or public fund, including a copy of the memorandum and articles proposed for the segregated portfolio company; and
- (ii) the documents and information required under regulation 3(2) of the Securities and Investment Business (Incubator and Approved Funds) Regulations, in the case of an incubator or approved fund; and
- (d) a copy of the offering document, or in the case of an incubator or approved fund the investment warning, for each of the initial segregated portfolios that it is intended will be created.
- (4) An application under subregulation (1) for approval to register an existing mutual fund as a segregated portfolio company shall be in the approved form and shall be accompanied by—
- (a) its memorandum and articles and the changes proposed to be made to the memorandum and articles should its application be approved;
- (b) a statement in the approved form, signed by at least one director of the company on behalf of the board, setting out—
- (i) the assets and liabilities of the company as at a date no more than 6 months prior to the date of the application;
- (ii) details of any transactions, events or other matters not reflected in the statement of assets and liabilities that the directors consider have materially affected or, prior to its registration as a segregated portfolio company are likely to materially affect, the assets and liabilities of the company;
- (iii) the assets of the company that it is intended will be segregated portfolio assets, specifying in respect of which portfolio, and the assets that it is intended will be general assets; and
- (iv) how the liabilities of the company will be satisfied;
- (c) a declaration in the approved form signed by at least one director of the company on behalf of the board that—

- (i) resolutions of the directors have been passed approving the registration of the company as a segregated portfolio company;
 - (ii) the company is solvent and that the company and each proposed segregated portfolio will, after the assets of the company have been allocated to segregated portfolios, be solvent; and
 - (iii) the company has given notice to members of its intention to apply for registration as a segregated portfolio company; and
- (d) a copy of the offering document or, in the case of an incubator fund or approved fund a copy of the investment warning, for each of the initial segregated portfolios that it is intended will be created.

(5) For the avoidance of doubt, where an application under subregulation (1) for the incorporation or registration of a segregated portfolio company relates to an incubator fund or approved fund, the company shall have or appoint an administrator as provided in subregulation (2).

Approval of application

4. (1) Where the Commission is satisfied that the requirements for an application under regulation 3 for the incorporation or registration of a segregated portfolio company have been complied with, the Commission shall approve the application.

(2) The requirements for an application under regulation 3 shall not be considered to be complied with, unless the Commission is satisfied that the application is in the approved form and provides all required information and is accompanied by the relevant documents or other information specified in that regulation.

Functionaries of a mutual fund SPC

5. (1) Subject to subregulation (3), a mutual fund SPC shall at all times have one or more administrators, managers and custodians, and may appoint one or more investment advisors.

(2) The instrument under which a functionary is appointed shall specify—

- (a) in respect of which segregated portfolio or portfolios the functionary is appointed; and
- (b) his or her responsibilities and duties in respect of each such segregated portfolio.

(3) The Commission may, in any particular case or with respect to any specific class of—

- (a) segregated portfolio company, exempt a mutual fund SPC from having one or more of the functionaries referred to in subregulation (1), except that a mutual fund SPC shall not be exempted from having an administrator; and
- (b) segregated portfolio, exempt the segregated portfolio from having one or more of the functionaries referred to in subregulation (1), except that the segregated portfolio shall not be exempted from having an administrator.

(4) An exemption granted by the Commission under subregulation (3) shall be in writing, but where the exemption relates to a specific class of segregated portfolio company, the exemption shall be granted in accordance with an Order published on the Internet site.

Audit of financial statements

6. (1) A mutual fund SPC that is a private or professional fund or a public fund shall have an auditor who shall be responsible for auditing its financial statements in accordance with the Mutual Funds Regulations or the Act, as the case may be.

(2) A mutual fund SPC that is an incubator fund or approved fund shall prepare and submit its financial statements in accordance with the Securities and Investment Business (Incubator and Approved Funds) Regulations.

(3) Subject to subregulation (4), a mutual fund SPC that is—

- (a) a private or professional fund or a public fund may audit each of its segregated portfolios separately, or consolidate their audit in the audit of the mutual fund SPC but in each case identifying the segregated portfolios; and
- (b) an incubator fund or approved fund may prepare financial statements of its segregated portfolios separately, or consolidate them in the financial statements of the mutual fund SPC but in each case identifying the segregated portfolios.

(4) The Commission may, in respect of any segregated portfolio company or class of segregated portfolio company—

- (a) exempt an audit of the financial statements of a segregated portfolio or segregated portfolios of that company; or
- (b) exempt the company from the requirement to prepare and submit financial statements in relation to a segregated portfolio or segregated portfolios of that company.

Creation of segregated portfolios

7. (1) Subject to subregulation (2)—

- (a) a mutual fund SPC that is registered as a public fund shall not create a segregated portfolio without the prior written approval of the Commission;
- (b) a mutual fund SPC that is recognised as a private or professional fund shall not create a segregated portfolio without the prior written approval of the Commission unless each of the persons who will be appointed by the company to act as functionaries with respect to the segregated portfolio—
 - (i) are the same persons as the functionaries notified to the Commission on the application submitted under the Act or in any subsequent notification of change of functionary; or
 - (ii) have their principal place of business in a jurisdiction that is a recognised jurisdiction for the purposes of the Act; and

(c) a mutual fund SPC that is an incubator fund or approved fund shall not create a segregated portfolio without the prior written approval of the Commission.

(2) Subregulation (1) does not apply to a segregated portfolio specified in the application as an initial segregated portfolio, provided that—

(a) in the case of a private or professional fund or a public fund, the offering document for the segregated portfolio is in substantially the same form as the offering document submitted to the Commission under regulation 3(3) or (4);

(b) in the case of an incubator fund or approved fund, the investment warning for the segregated portfolio is in substantially the same form as the investment warning submitted to the Commission under regulation 3(3) or (4); and

(c) if applicable, the functionaries appointed by the segregated portfolio company to act with respect to the segregated portfolio are the same persons as those specified in the application.

(3) An application for approval to create a segregated portfolio under subregulation (1) shall be in the approved form.

(4) A mutual fund SPC is not restricted in the number of segregated portfolios it may create so long as it complies with the requirements of this regulation with regard to the creation of the segregated portfolios.

Notification of creation of segregated portfolios

8. (1) A mutual fund SPC to which regulation 7(1) does not apply shall, within 14 days of the creation of a segregated portfolio, submit a notice to the Commission in the approved form containing—

(a) the name of the segregated portfolio company;

(b) details of the segregated portfolio that has been created, including the name, identification or designation of the portfolio;

(c) details of the functionaries who have been, or will be, appointed by the segregated portfolio company to act in respect of the segregated portfolio; and

(d) the date of creation of the segregated portfolio.

(2) A mutual fund SPC shall not create a segregated portfolio unless it has previously issued an offering document or investment warning with respect to the segregated portfolio, and a copy of the offering document or investment warning shall be submitted to the Commission together with the notice specified under subregulation (1).

(3) A mutual fund SPC that contravenes subregulation (1) or (2) is liable to the imposition by the Commission of an administrative penalty.

Terminating a segregated portfolio

9. (1) A segregated portfolio company may terminate a segregated portfolio by submitting to the Commission in writing a notification that—

- (a) the company intends to terminate the segregated portfolio, indicating when the termination takes effect, not being earlier than 7 days after the Commission receives notification of termination;
 - (b) the segregated portfolio does not, or on the date of termination will not, have segregated portfolio assets attributable to the segregated portfolio;
 - (c) the segregated portfolio has no, or on the date of termination will not have any, outstanding liability;
 - (d) where the segregated portfolio has, or on the date of termination will have, an outstanding liability, the liability will be paid from the general assets of the company; and
 - (e) confirming that the segregated portfolio is not being terminated in a manner prejudicial to investors and creditors.
- (2) Where a segregated portfolio has not engaged in any business since its creation, the segregated portfolio company shall, in addition to or as part of the notification submitted under subregulation (1)—
- (a) confirm that the segregated portfolio has never commenced business;
 - (b) provide the reason or reasons why the segregated portfolio never commenced business; and
 - (c) confirm that upon the reinstatement of the segregated portfolio the company shall notify the Commission in accordance with section 138A(4) of the BVI Business Companies Act and regulation 12.
- (3) In relation to subregulation (1)(a), the Commission may permit a shorter period for the termination of a segregated portfolio taking effect, including on the date of receipt of the notification of termination.

Effect of termination of a segregated portfolio

10. (1) Subject to subregulation (2), where a segregated portfolio is terminated by a segregated portfolio company under regulation 9, neither the company nor a creditor of the segregated portfolio or any other person may—

- (a) commence legal proceedings, carry on any business or in any way deal with the segregated portfolio assets attributable to the segregated portfolio prior to the termination of the segregated portfolio under regulation 9;
 - (b) defend any legal proceedings, make any claim or claim any rights for, or in the name of, the segregated portfolio; or
 - (c) act in any way with the affairs of the segregated portfolio.
- (2) Where a segregated portfolio is terminated in accordance with regulation 9, the segregated portfolio company, creditor or other person may—
- (a) in the case of the company, reinstate the segregated portfolio; or
 - (b) in the case of a creditor or any other person, make application to the Court for an order reinstating the segregated portfolio; and
 - (c) continue to carry on legal proceedings that were instituted in relation to the segregated portfolio prior to its termination; or

(d) pursue a claim on behalf of or in relation to the segregated portfolio.

(3) The reinstatement of a segregated portfolio under this regulation shall terminate as soon as the purpose of the reinstatement comes to an end.

(4) Where a reinstated segregated portfolio terminates pursuant to subregulation (3), the segregated portfolio company, creditor or other person on whose initiative the segregated portfolio was reinstated under subregulation (2) shall, within 7 days of the termination, notify the Commission of the termination.

(5) Subregulation (3) does not affect a segregated portfolio company's power or authority to reinstate a segregated portfolio in accordance with section 138A(4) of the BVI Business Companies Act.

(6) A segregated portfolio company, creditor or other person who fails to comply with the requirement of subregulation (4) is liable to the imposition by the Commission of an administrative penalty.

Reuse of a reinstated segregated portfolio

11. Regulations 6, 7 and 8 shall apply to a segregated portfolio reinstated pursuant to section 138A of the BVI Business Companies Act, if the reinstatement is effectively a reuse of the segregated portfolio and not for the purpose outlined in regulation 10.

Notification on reinstatement of a segregated portfolio

12. (1) Where a segregated portfolio company reinstates a segregated portfolio, the company shall, within 7 days of the date of reinstatement, notify the Commission in writing of the reinstatement of the segregated portfolio and pay the requisite fee.

(2) Where the Court makes an order under regulation 10(2)(b) reinstating a segregated portfolio, the creditor or other person on whose initiative the order was made shall, within 7 days of the making of the order, provide a copy of the order to the Commission. (*Amended by S.I. 48/2018*)

(3) A person who fails to comply with subregulation (1) or (2) is liable to the imposition by the Commission of an administrative penalty.

Control over names

13. (1) If the Commission considers that the name, identification or designation of a segregated portfolio is misleading or undesirable, it may by written notice direct the segregated portfolio company to change the name of the segregated portfolio on or before the date specified in the notice, which shall not be less than 21 days after the date of the notice.

(2) A segregated portfolio company that fails to comply with a notice issued under subregulation (1) is liable to the imposition by the Commission of an administrative penalty.

(3) The imposition of an administrative penalty by the Commission under subsection (2) is without prejudice to the Registrar of Corporate Affairs' exercise of his or her power under section 22 of the BVI Business Companies Act to direct a company to change its name.

Notification of changes in information submitted to the Commission

14. (1) Subject to subregulation (2), a segregated portfolio company shall, by notice in the approved form, notify the Commission of any change in information that the company is required to submit to the Commission under these Regulations, within 14 days of the date that the information changed.

(2) Subregulation (1) does not apply to information provided to the Commission under regulation 3(4)(b) or (c).

(3) A segregated portfolio company that fails to notify the Commission of any change in information as provided in subregulation (1) is liable to the imposition by the Commission of an administrative penalty.

Fees

15. The fees and penalties specified in the Schedule shall be payable to the Commission.

Transitional provision

16. A segregated portfolio which had been terminated prior to the coming into force of these Regulations may be reinstated and, in that regard, the segregated portfolio company of the segregated portfolio shall be treated as if it had terminated the segregated portfolio in accordance with the requirements of regulation 9.

Revocation and saving

17. (1) The Segregated Portfolio Companies Regulations are revoked.

(2) Where upon the coming into force of these Regulations an application or any other matter was pending under the revoked Segregated Portfolio Companies Regulations, that application or other matter shall continue to be dealt with under these Regulations as if the application or other matter was made or processed in accordance with these Regulations.

(3) Where a segregated portfolio company was approved, or a segregated portfolio created, under the Segregated Portfolio Companies Regulations revoked under subregulation (1), the segregated portfolio company or segregated portfolio shall continue in existence as if it were approved or created under or in accordance with these Regulations.

SCHEDULE**FEES PAYABLE BY A SEGREGATED PORTFOLIO COMPANY****PART I****APPLICATION AND APPROVAL FEES**

Fee Description	Fee US\$
For application to incorporate or register a company as a mutual fund SPC—	
(a) In respect of the company	1,500
(b) In respect of each segregated portfolio included in the application	350
For application to register an existing mutual fund as a segregated portfolio company	1,500
For an application for approval to create a segregated portfolio	350
Exempting a mutual fund SPC from having one or more functionaries (exemption under an Order made by the Commission excepted)	500
Exempting a segregated portfolio company from auditing or preparing financial statements in respect of a segregated portfolio	500
For notification of the creation of a segregated portfolio	350
For notification to the Commission of the reinstatement of a segregated portfolio	350
For the provision of any other service by the Commission for which a fee has not been prescribed	250

PART II**INITIAL FEES**

Fee Description	Fee US\$
Where a mutual fund is incorporated or registered on or before 30 June in any year, an initial fee on incorporation or registration—	
(a) In respect of the segregated portfolio company	1,500
(b) In respect of each segregated portfolio approved	300
Where a mutual fund is incorporated or registered on or after 1 July in any year, an initial fee on incorporation or registration—	
(a) In respect of the segregated portfolio company	750
(b) In respect of each segregated portfolio approved	150
On approval being granted to create one or more segregated portfolios, an initial fee in respect of each segregated portfolio approved—	
(a) Where the creation of the segregated portfolio is approved on or before 30 June	300
(b) Where the creation of the segregated portfolio is approved on or after 1 July	150
The maximum initial fees payable by a mutual fund SPC in any year	10,000

PART III

ANNUAL FEES

Annual Fee Description	Fee US\$
A mutual fund SPC shall pay an annual fee on or before 31 March of each year, commencing in the year following its incorporation or registration—	
(a) In respect of the segregated portfolio company	1,500
(b) For each segregated portfolio in existence as at 31 December of the immediately preceding year	350
The maximum annual fee payable by a mutual fund SPC in any year	10,000

PART IV

LATE PAYMENT PENALTY

Description of Contravention	Penalty US\$
For failure to provide notification within the prescribed period	15% of the notification fee for each month or part thereof that the notification remains outstanding
For failure to pay annual fee in full on or before 31 March in any year	\$250 for each month or part thereof after the annual fee has become due and payable