

Guide to the continuing obligations of a BVI investment business licensee

GUIDE

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The following is an overview of the continuing obligations of an investment business licensee¹ (a **licensee**) under the Securities and Investment Business Act 2010 (as amended, **SIBA**), the Regulatory Code 2009 (as amended, the **Code**) and the Financial Services Commission Act 2001 (as amended, the **FSCA**).

1 Actions requiring the prior written consent of the BVI Financial Services Commission (the FSC)

Action	Statutory reference
Appointment of a director or senior officer of a licensee.	Section 10(1) of SIBA.
The sale, transfer, charging or other disposal by a person owning or holding a significant interest or controlling interest in the licensee of the person's interest in the licensee or any part of the person's interest in the licensee. ² A significant interest means, in respect of an undertaking, a holding or interest in the undertaking, or in any part of the undertaking held or owned by a person, either alone or with any other person, and whether legally or equitably, that entitles or enables the person, directly or indirectly: (a) to control ten per cent or more of the voting rights of the undertaking; (b) to a share of ten per cent or more in any distribution made by the undertaking; (c) to a share of ten per cent or more in any distribution of the surplus assets of the undertaking; or (d) to appoint or remove one or more directors of the undertaking. A controlling interest means, in respect of a licensee, the ownership or interest in the licensee or in any holding company of the licensee which entitles a person to exert influence over a licensee, or any holding company of the licensee, and includes a person who: (a) has more than fifty per cent of the voting rights of the licensee; (b) has a significant interest in the licensee which, although not constituting fifty per cent of the voting rights of the licensee (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the licensee; (c) has an influence over the activities of the licensee without having a significant interest; or (d) makes instructions to a director or senior officer of the licensee to which that director or senior officer is accustomed to acting.	Section 11(1) of SIBA.
The direct or indirect acquisition of a significant interest or controlling interest (as defined above) in a licensee. ³	Section 11(2) of SIBA.
A licensee causing, permitting or acquiescing in a sale, transfer, charge or other disposition of a significant interest or controlling interest (as defined above) in the licensee or any part of a significant interest or controlling interest in the licensee. ⁴	Section 11(3)(a) of SIBA.

¹ A person holding a licence issued under Section 6 of SIBA.

² Save for where a licensee is a publicly traded company.

³ Save for where a licensee is a publicly traded company.

⁴ Save for where a licensee is a publicly traded company.

A licensee issuing or allotting any shares or causing, permitting or acquiescing in any other reorganisation of its share capital that results in:	Section 11(3)(b) of SIBA.
(a) a person acquiring a significant interest or controlling interest (as defined above) in the licensee; or	
(b) a person who already owns or holds a significant interest or controlling interest (as defined above) in the licensee increasing or decreasing the size of the person's interest.	
A licensee opening, maintaining or carrying on business through a branch or a representative or contact office outside the BVI.	Section 12(a) of SIBA.
A licensee incorporating, forming or acquiring any subsidiary.	Section 12(b) of SIBA.
A licensee (other than a licensed fund manager or a licensed fund administrator) changing its corporate name or the name under which it carries on business.	Section 14(2) of SIBA.

2 Actions, information, items or matters required to be notified or submitted to the FSC

Action/information/item/matter	Period for notification/submission	Statutory reference
A licensee which is a licensed fund manager or a licensed fund administrator changing its corporate name or the name under which it carries on business.	Within 21 days from the change.	Section 14(1) of SIBA.
A licensed fund manager and a licensed private investment fund manager commencing to act as an investment manager of:	Within 21 days of commencing to act.	Section 14A of SIBA.
(a) a mutual fund;		
(b) a private investment fund; or		
(c) a fund with equivalent characteristics to a mutual fund or private investment fund.		
The notification must include:		
(a) the name of the fund;		
(b) the jurisdiction and date of incorporation, registration or formation of the fund; and		
(c) confirmation as to the type of fund.		
The financial statements of a licensee which is a BVI undertaking must be submitted to the FSC.	Six months from the end of the relevant financial period (or within any extension requested by a licensee from, and granted by, the FSC). ⁵	Sections 71(1) and 73 of SIBA.
The financial statements of a licensee must be signed by at least one director (where the licensee is a BVI business company) and be accompanied by:		
(a) a director's certificate in the approved form;		
(b) an auditor's report;		
(c) a report on the affairs of the licensee made in respect of the relevant financial		

⁵ The FSC may, in certain circumstances following an application by a licensee, exempt a licensee from the requirement to submit audited financial statements (paragraph 2, Schedule 5 of the Financial Services (Miscellaneous Exemptions) Regulations, 2010).

Action/information/item/matter	Period for notification/submission	Statutory reference
<p>year to the members of the licensee; and</p> <p>(d) such other documents as may be prescribed.</p>		
<p>Any information of which a licensee becomes aware (whether before or after the FSC has approved the appointment of a director, senior manager, auditor, actuary or other independent officer of a licensee, or has approved a significant owner or controller) that is reasonably material to the FSC's fit and proper assessment of the person.</p> <p>A significant owner means, with respect to an undertaking or licensee, a person having a significant interest in the undertaking or licensee.</p> <p>A controller means, with respect to a licensee, a person with a controlling interest (as defined above) in the licensee.</p>	As soon as reasonably practicable.	Section 16(2) of the Code.
A licensee ceasing to have two directors.	Immediately.	Section 19(7)(a) of the Code.
An application for the approval of a replacement director where a licensee has ceased to have two directors.	Within 21 days from the date on which the licensee ceased to have two directors.	Section 19(7)(b) of the Code.
A serious compliance breach by a licensee.	Immediately.	Section 45(1)(b)(i) of the Code.
A licensee's annual compliance report.	Within three months after the end of the year to which the report relates.	Sections 45(1)(b)(ii) and 45(1A) of the Code.
<p>A significant complaint which has remained unsettled for longer than three months.</p> <p>A significant complaint means a complaint that alleges:</p> <p>(a) a breach of a regulatory enactment;</p> <p>(b) bad faith, malpractice or impropriety on the part of the licensee or one of its directors, employees or agents;</p> <p>(c) the repetition or recurrence of a matter previously complained of (whether significant or otherwise); or</p> <p>(d) that the complainant has suffered, or may suffer, financial loss that is material in relation to the complainant's financial circumstances.</p>	Immediately after the expiry of the three month period.	Section 69B(4) of the Code.
Any matter that might reasonably be expected to have a significant regulatory impact.	Immediately after the licensee becomes aware of the matter concerned or has reasonable grounds for believing that the matter	Sections 70(1) and 70(4) of the Code.

Action/information/item/matter	Period for notification/submission	Statutory reference
	concerned has occurred or that it may occur in the foreseeable future.	
Any of the following events and changes: (a) an application being made to the BVI High Court for the appointment of a liquidator or administrator of the licensee under the Insolvency Act 2003 (as amended, the Insolvency Act); (b) a meeting being called to consider the appointment of a liquidator of the licensee under section 159(2) of the Insolvency Act; (c) a proposal being made for a creditors' arrangement under the Insolvency Act; (d) the making of, or any proposals for the making of, a composition or arrangement with one or more creditors of the licensee other than a creditors' arrangement as referred to in (c) above; (e) the striking of the licensee off the register of companies maintained by the Registrar of Corporate Affairs under the BVI Business Companies Act 2004 (as amended); (f) the appointment of a receiver of the licensee or any of its property, whether by a creditor, the BVI High Court or otherwise; (g) anything equivalent to events (a) to (f) occurring in a jurisdiction outside the BVI; (h) the bringing of civil proceedings against the licensee where the size of the claim is significant with respect to the licensee's financial resources or is likely to affect the licensee's reputation; (i) the commencement of an investigation with respect to the business or affairs of the licensee by any overseas regulatory authority; (j) the taking of any enforcement action or the imposition of any disciplinary measures against the licensee by a foreign regulatory authority or a professional body (in or outside the BVI), including the refusal or revocation of	Immediately ⁸ , except in the case of (q), (s), (t) or (u). In the case of (q), within a reasonable time prior to the proposed restructuring or reorganisation taking effect. In the case of (s) or (t), within 14 days of the transfer. In the case of (u), within 14 days of the change.	Section 72 and Schedule 3 of the Code.

⁸ **Immediately** means (a) immediately after there are reasonable grounds for a licensee believing that the event is likely to occur in the foreseeable future; and (b) irrespective of (a), immediately after a licensee knows, or has reasonable grounds for believing, that the event has occurred.

Action/information/item/matter	Period for notification/submission	Statutory reference
<p>membership by such a professional body;</p> <p>(k) the prosecution or conviction of the licensee, or any of its directors or senior managers, in or outside the BVI for any offence (a) relating to financial services or (b) involving fraud or dishonesty;</p> <p>(l) the granting or refusal of an application for a licence to carry on any financial services business outside the BVI or the revocation of any such application;</p> <p>(m) the commission by any employee of the licensee of a fraud against a customer of the licensee;</p> <p>(n) the licensee becoming aware of any fraud committed against it;</p> <p>(o) any matter that the licensee considers to be material to the fit and properness of the licensee or any person having a significant interest in it or any of its directors or senior managers;</p> <p>(p) any significant failure in the licensee's systems or controls;</p> <p>(q) any proposed significant restructuring or reorganisation of the licensee or its regulated business or activities;</p> <p>(r) any material breach of the capital or financial resource requirements imposed on the licensee by a regulatory enactment or the Code;</p> <p>(s) any transfer⁶ of an interest in a licensee by operation of law or pursuant to an order of the BVI High Court, where (i) the person whose interest is transferred holds, or before the transfer held, a significant interest in the licensee or (ii) as a result of the transfer, a person becomes the holder of a significant interest in the licensee;</p> <p>(t) any transfer⁷ of an interest in the licensee which does not require the approval of the FSC, where (i) the person whose interest is transferred holds, or before the transfer is held, an interest that is not a significant interest in the licensee, or (ii) as a result of the transfer, a person becomes the holder of an interest that is not a significant interest in the licensee; or</p>		

⁶ A **transfer** includes a sale, acquisition charge or other disposal.

⁷ A **transfer** includes a sale, acquisition, charge or any disposal.

Action/information/item/matter	Period for notification/submission	Statutory reference
(u) a change of address of the principal office of the licensee, whether within or outside the BVI, where prior approval of the FSC for such a change is not required.		
Any of the following:	Reasonable prior notice.	Section 72(3) of the Code.
(a) a change in a licensee's name or any business name under which it carries on regulated business;		
(b) a change in a licensee's address of its principal office or place of business, whether in or outside the Virgin Islands;		
(c) a change in the address of a licensee's registered office; or		
(d) a licensee carrying on business in a manner materially different to its most recent business plan.		
The fact that a licensee ⁹ has determined that, having regard to the nature, size, complexity, structure and diversity of its licensed business, a professional indemnity insurance (as required under section 182(1) of the Code) is not appropriate in its case.	Not stated.	Section 182(2) of the Code.
A licensee forms the opinion that it does not comply with the requirements under Section 7(1) of SIBA (see below).	Immediately.	Section 7(2) of SIBA.

3 Operational obligations

Obligation	Statutory reference
A licensee must, at all times, maintain its business in a financially sound condition by:	Section 7(1) of SIBA.
(a) having assets;	
(b) providing for its liabilities; and	
(c) generally conducting its business,	
so as to be in a position to meet its liabilities as they fall due.	
A licensee must maintain its capital resources in an amount not less than the prescribed minimum imposed by the Code (if any).	Section 8(1) of SIBA.
Every share in a corporate licensee must be fully paid for in cash unless otherwise permitted by the Code or authorised by the FSC in writing.	Section 9(1) of SIBA.
A licensee must at all times maintain such professional indemnity and other insurance as may be prescribed.	Section 13 of SIBA.
A licensee must not issue any bearer shares.	Section 16(1) of SIBA.
A licensee must keep records that are sufficient:	Sections 17(1) and 17(3) of SIBA.
(a) to show and explain its transactions;	
(b) at any time, to enable its financial position to be determined with	

⁹ This does not apply to a licensee that holds a category 7 investment business licence (operating an investment exchange).

Obligation	Statutory reference
<p>reasonable accuracy;</p> <p>(c) to enable it to prepare such financial statements and make such returns as it is required to prepare and make under SIBA and the Code; and</p> <p>(d) to enable, if applicable, its financial statements to be audited in accordance with SIBA.</p> <p>A licensee must keep any such records for a period of at least five years after the completion of the transaction to which they relate.</p>	
<p>A licensee must:</p> <p>(a) ensure that client assets are identified, or identifiable, and appropriately segregated and accounted for; and</p> <p>(b) make arrangements for the proper protection of client assets.</p>	Section 18(1) of SIBA.
<p>A licensee must not, in relation to any activity that constitutes investment business, whether or not carried on by him and whether or not the activity is one that he is authorised to carry on, or in relation to any investment:</p> <p>(a) issue, or cause or permit to be issued, an advertisement, brochure or similar document or make, or cause or permit to be made, a statement, promise or forecast, which he knows, in a material particular:</p> <p>(i) is false or misleading; or</p> <p>(ii) contains an incorrect statement of fact;</p> <p>(b) issue, or cause or permit to be issued, an advertisement, brochure or similar document or make, or cause or permit to be made, a statement, promise or forecast, where he is reckless as to whether the advertisement, brochure, document, statement, promise or forecast, in a material particular:</p> <p>(i) false or misleading; or</p> <p>(ii) contains an incorrect statement of fact; or</p> <p>(c) dishonestly conceal a material fact, whether in connection with an advertisement, brochure or similar document, statement, promise or forecast, or otherwise.</p>	Section 19(1) of SIBA.
<p>Unless it has a significant management presence in the BVI, a licensee must appoint, and at all times have, an authorised representative who must be a person certified by the FSC in accordance with SIBA.</p>	Section 65(1) of SIBA.
<p>A licensee must prepare for each financial year financial statements that comply with such accounting standards as may be prescribed.¹⁰</p>	Section 70(1) of SIBA.
<p>A licensee which is a BVI undertaking must appoint and at all times have an auditor for the purposes of auditing its financial statements.</p> <p>The auditor must be qualified under the Code to act as the auditor of the licensee and must have consented to act in that capacity.</p> <p>The appointment of the auditor must be approved by the FSC in writing before it is made unless the licensee is a licensed fund manager, a licensed fund administrator or a licensed fund investment advisor and:</p> <p>(a) the licensee has provided the FSC with not less than 14 days' written notice of its intention to appoint the person concerned as auditor; and</p> <p>(b) the FSC has not, prior to the person's appointment as auditor, provided the licensee notice that it objects to the appointment.</p>	Sections 75(1) and 75(2)(c) of SIBA and sections 56(5) and 56(6) of the Code.

¹⁰ The FSC may, in certain circumstances following an application by a licensee, exempt a licensee from the requirement to submit audited financial statements (paragraph 2, Schedule 5 of the Financial Services (Miscellaneous Exemptions) Regulations, 2010).

Obligation	Statutory reference
<p>A licensee must at all times conduct its licensed business in accordance with the following six principles:</p> <ul style="list-style-type: none"> (a) a licensee must conduct its business with integrity; (b) a licensee must take reasonable care to organise and control its affairs effectively and have adequate risk management systems in place; (c) a licensee must maintain adequate financial resources, including capital resources as appropriate, taking into account the nature, scale, complexity and diversity of its business and the risks it faces; (d) a licensee must have due regard for the interests of its customers and treat them fairly. A licensee must make adequate arrangements to protect its customers' assets when it has responsibility for them and must manage conflicts of interest fairly; (e) a licensee must be transparent in its business arrangements; and (f) a licensee must deal with the FSC in an open and cooperative manner. 	Section 8 of the Code.
<p>A licensee must establish and implement policies and procedures that require its employees to be adequately trained, or to undertake sufficient professional development, to perform their duties within the licensee.</p>	Section 14A of the Code.
<p>A licensee must take reasonable care to satisfy itself, prior to appointment and on an ongoing basis, that:</p> <ul style="list-style-type: none"> (a) its directors and senior managers are fit and proper for the role to which they are appointed; and (b) where the licensee is required to appoint an auditor, actuary or other independent officer, the auditor, actuary or other independent officer appointed is fit and proper. <p>The above fit and proper requirement also applies on an ongoing basis to a significant owner or controller (as defined above) of a licensee that has been approved by the FSC.</p>	Sections 16(1) and 16(2) of the Code.
<p>A licensee that is a BVI business company must:</p> <ul style="list-style-type: none"> (a) take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior managers and key functionaries so that: <ul style="list-style-type: none"> (i) it is clear who has which of those responsibilities; (ii) the business and affairs of the licensee can be adequately monitored and controlled by the directors and its relevant senior managers; and (iii) the employees of the licensee are appropriately supervised; and (b) establish and maintain such systems and controls as are appropriate for the nature, size, complexity, structure and diversity of its business. 	Section 18(1) of the Code.
<p>A licensee that is a BVI business company must:</p> <ul style="list-style-type: none"> (a) ensure that its systems and controls are regularly reviewed and updated as required; and (b) make and retain for the retention period, a record of how it has complied with this section. <p>Those systems and controls must take into account:</p> <ul style="list-style-type: none"> (i) the nature, scale, complexity and diversity of the licensee's business; and (ii) the degree of risk associated with each area of its business. 	Sections 18(2) and 18(3) of the Code.
<p>A licensee that is a BVI business company must take all reasonable steps to ensure that it obtains sufficient information about its customers in order to:</p> <ul style="list-style-type: none"> (a) exercise a relevant discretion or other power in a proper manner; and (b) ensure that such discretion or power is only exercised for a proper purpose. 	Section 18(4) of the Code.

Obligation	Statutory reference
<p>A licensee that is a BVI business company must:</p> <ul style="list-style-type: none"> (a) inform its customer, in writing, of the agreed terms of business between the licensee and the customer, including the instructions received and the capacity and scope of discretion, if any, within which the licensee will act for the customer; and (b) ensure that the agreed terms of business include— <ul style="list-style-type: none"> (i) a description of the products and services to be provided; (ii) the fees to be charged and the basis of the calculation of those fees; (iii) where applicable, the terms upon which customers' monies are to be held; (iv) any exit fee and the basis upon which the fee is calculated; and (v) the means by which complaints about the licensee's services can be made. <p>Those written terms of business must provide that the relationship between the licensee and its customer must be terminated upon giving reasonable notice, unless there are good reasons for not doing so.</p> <p>A licensee that is a BVI business company must adopt advertising and communication practices that promote advertisement that is clear and fair, and is free of false or misleading statements.</p>	<p>Sections 18A and 18B of the Code.</p>
<p>A licensee that is a BVI business company must have an adequate number of directors who:</p> <ul style="list-style-type: none"> (a) are capable of exercising independent judgment; (b) have sufficient knowledge, skills experience and understanding of the business of the licensee, and the risks to which the licensee is exposed, to ensure that the board is able to fulfil its responsibilities; and (c) have sufficient time and commitment to undertake their duties diligently. 	<p>Section 19(1) of the Code.</p>
<p>A licensee that is a BVI business company must at all times have two directors.</p>	<p>Section 19(2) of the Code.</p>
<p>Where a licensee carries on business through one or more subsidiaries incorporated outside BVI, an appropriate and effective corporate governance framework must be established, maintained and implemented in each subsidiary.</p>	<p>Section 23 of the Code.</p>
<p>A licensee must:</p> <ul style="list-style-type: none"> (a) establish such strategies, policies, systems and controls as are appropriate given the nature, size, complexity, structure and diversity of the licensee's business and the degree of risk associated with each area of its business; and (b) ensure that the strategies, policies, systems and controls are fully and clearly documented and are communicated, as appropriate, to members of staff and other functionaries. 	<p>Sections 25(1) and 25(2) of the Code.</p>
<p>The strategies, policies, systems and controls of a licensee must specify the duties and responsibilities of the board and senior management, including such responsibilities and duties as are imposed on the board and senior management by the Code.</p>	
<p>A licensee must establish and maintain:</p> <ul style="list-style-type: none"> (a) a clearly defined strategy, and if the board considers it appropriate, policies, for the effective management of all significant risks that the licensee is or may be exposed to; and (b) systems and controls that are sufficient to ensure that the risk 	<p>Sections 26, 69(1) and 69(2) of the Code.</p>

Obligation	Statutory reference
management strategy and policies are effectively implemented.	
A licensee must establish a business continuity policy, and put business continuity arrangements in place, aimed at ensuring that, in the event of an unforeseen interruption or disruption:	Section 27(1) of the Code.
(a) the licensee is able to continue to carry on its regulated business and to meet its regulatory obligations and its obligations under, or obligations imposed on it by, the Proceeds of Criminal Conduct Act 1997 (as amended), the Anti-money Laundering Regulations 2008 (as amended) or the Anti-Money Laundering and Terrorist Financing Code of Practice 2008 (as amended);	
(b) losses to its functions, systems and data are limited and any losses may be recovered in a timely manner; and	
(c) where the severity of the interruption or disruption results in the licensee ceasing its regulated business, or any part of it, it is able to resume its business in a timely manner.	
The business continuity policy and arrangements must be:	
(i) appropriate for the nature, size, complexity, structure and diversity of the licensee's business and the types and degree of risk to which it is exposed; and	
(ii) regularly reviewed and tested, and updated as required.	
The interruptions and disruptions covered by the business continuity plan and arrangements must include:	
(i) the loss or failure of internal and external resources, including human resources, systems and other assets;	
(ii) the loss or corruption of data and other information; and	
(iii) external events, such as criminal acts and hurricanes and other natural disasters.	
A licensee must have in place reliable and secure information systems that cover all the significant activities carried on by the licensee and, where appropriate, that enable the licensee to measure, assess and report on the size, composition and quality of its exposures.	Section 31 of the Code.
A licensee's information systems must be monitored independently and supported by adequate contingency arrangements.	
A licensee must ensure that:	Section 32 of the Code.
(a) the effectiveness of the internal control system is monitored on an on-going basis;	
(b) regular reports on the effectiveness of the internal control system are made to the board; and	
(c) any deficiencies identified in the internal control system are corrected as soon as reasonably practicable.	
A licensee's internal control policies must require any deficiencies identified in the internal control system to be reported in a timely manner to senior management and for material internal control deficiencies identified to be reported to the board, notwithstanding that they may have been corrected.	
A licensee that is a BVI business company holding a category 5 investment business licence (custody of investments) must appoint one or more persons as its internal audit function.	Section 34(2) of the Code.
A licensee must establish a record retention policy which includes:	Sections 39(1) and 39(2) of the Code.
(a) the period of time for which various types of record will be retained (which, subject to other BVI legislation requiring the licensee to retain records for a longer period, is at least five years);	

Obligation	Statutory reference
<p>(b) how records are to be securely and safely stored; and</p> <p>(c) the process by which stored records can be readily accessed when required by the licensee, the FSC, law enforcement agencies or other persons entitled to access them.</p>	
<p>A licensee must establish, maintain and implement a compliance policy and compliance systems and controls.</p> <p>The compliance policy must be appropriate for the nature, scale, complexity and diversity of the business carried on by a licensee.</p> <p>The compliance systems and controls must be:</p> <p>(a) sufficient to ensure compliance:</p> <p>(i) by the licensee with its compliance policies and its regulatory obligations;</p> <p>(ii) by the licensee's board, senior management and employees with its compliance policies and any obligations that may be imposed on them by the FSCA, a regulatory enactment or the Code; and</p> <p>(iii) with the licensee's internal controls;</p> <p>(b) adequate to identify compliance breaches; and</p> <p>(c) effectively implemented by the licensee.</p>	Section 41(1) to 41(4) of the Code.
<p>A licensee's compliance policy, systems and controls shall be:</p> <p>(a) documented in a compliance procedures manual; and</p> <p>(b) communicated, and readily available to the licensee's directors and those senior managers and staff who have responsibility for implementing them.</p>	Section 41(5) of the Code and section 34(2) of the FSCA.
<p>A licensee must appoint an individual approved by the FSC as its compliance officer¹¹ to have responsibility for:</p> <p>(a) overseeing the licensee's compliance function;</p> <p>(b) reporting to the FSC in such manner and with such frequency as specified in the Code;</p> <p>(c) reporting to the directors of the licensee; and</p> <p>(d) acting as liaison between the licensee and the FSC, with respect to the licensee's compliance function.</p>	Section 34(3) of the FSCA.
<p>A licensee must:</p> <p>(a) establish and maintain a complaints policy which provides for the effective consideration and proper handling of any complaints made to the licensee and for appropriate remedial action to be taken, where appropriate; and</p> <p>(b) maintain a complaints register in which the licensee must record any complaints received together with details of how the complaint has been, or is being, dealt with.</p>	Section 69(A) of the Code.
<p>A licensee that is a BVI undertaking must:</p> <p>(a) ensure that, at all times, it maintains capital resources at a level that is adequate to support its investment business, taking into account the nature, size, complexity, structure and diversity of that business and its risk profile; and</p> <p>(b) maintain adequate systems and controls to monitor and assess its capital adequacy requirements on an ongoing basis.</p>	Section 181(1) of the Code.

¹¹ The FSC may, in certain circumstances following an application by a licensee, exempt a licensee from the requirement to appoint a compliance officer (paragraph 2, Schedule 1 of the Financial Services (Miscellaneous Exemptions) Regulations, 2010).

Obligation	Statutory reference
A licensee ¹² that is a BVI undertaking must ensure that, at all times, it maintains such professional indemnity, fidelity and other insurance as is appropriate taking into account the nature, size, complexity, structure and diversity of its licensed business.	Section 182(1) of the Code.
A licensee must, in carrying on its licensed business, act honestly, fairly and with due skill, care and diligence in fulfilling the responsibilities that it has undertaken.	Section 183 of the Code.
A licensee, when acting as a functionary of a fund, must, subject to any agreement between the licensee and the fund: <ul style="list-style-type: none"> (a) act in the best interests of the fund; (b) if it acts as functionary for more than one fund, ensure that all the funds for which it acts are, between each other, dealt with fairly and that no fund is given an unfair advantage; and (c) in its dealing with investors of the fund, ensure that all investors are treated fairly. 	Section 184 of the Code.
Where a licensee provides services constituting investment business to a retail customer, it must do so under a written agreement signed by both the licensee and the customer.	Section 186(1) of the Code.
Where a licensee provides services constituting investment business to a customer who is not a retail customer, whether on a discretionary basis or otherwise, it must provide the customer with the terms on which the licensee is prepared to provide the services.	Section 187(1) of the Code.
Before providing services that constitute investment business to a customer, a licensee must disclose to the customer in writing: <ul style="list-style-type: none"> (a) the basis or amount of the licensee's charges for the provision of those services; and (b) in the case of a retail customer, details of the licensee's professional experience in relation to the services to be provided. A licensee must not provide advice to a retail customer concerning a transaction or investment strategy or act as a discretionary manager for a retail customer unless the licensee has taken reasonable steps to make the customer aware of the risks involved and of any conflicts of interest.	Section 188 of the Code.
Where a licensee is responsible for providing advice to, or exercising discretion for, a retail customer, it must obtain, record and maintain any information about the circumstances (both financial and otherwise) and the investment objectives of the customer that are relevant to the advice to be provided or the discretion to be exercised.	Section 189 of the Code.
If a retail customer declines to provide information concerning the retail customer's circumstances and investment objectives, a licensee must not provide advice to, or exercise discretion on behalf of, the retail customer unless it has first disclosed to the retail customer that the lack of such information may adversely affect the service that it can provide.	
A licensee must take reasonable steps to ensure that it does not in the course of its licensed business provide any advice to a retail customer, or exercise a discretion for a retail customer, unless the advice, or exercise of discretion, is suitable for the retail customer having regard to: <ul style="list-style-type: none"> (a) the facts disclosed by the retail customer, including facts disclosed in a fund prospectus or offering document (if any); 	

¹² This does not apply to a licensee that holds a category 7 investment business licence (operating an investment exchange).

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<p>(b) the terms of any agreement with the retail customer; and</p> <p>(c) any other relevant facts about the retail customer of which the licensee is, or should reasonably be, aware.</p> <p>A licensee must take reasonable steps to ensure that the facts about a retail customer that is required to take into account are recorded as soon as the licensee becomes aware of them.</p>	
<p>The fees and charges levied by a licensee for the provision of investment business services to retail customers must not be unreasonable in the circumstances.</p>	Section 190 of the Code.
<p>A licensee must deal with customer and own account orders fairly and in due turn.</p>	Section 191 of the Code.
<p>Once a licensee has agreed with a customer or decided in its discretion to effect or arrange a customer order, it must effect or arrange the execution of the order as soon as reasonably practicable in the circumstances, unless postponement of the order is in the best interests of the customer.</p> <p>Where a licensee decides to postpone an order in the best interests of the customer, it must record the decision together with reasons for the decision.</p>	Section 192 of the Code.
<p>A licensee must:</p> <p>(a) ensure that a transaction it executes is promptly allocated; and</p> <p>(b) record the intended basis of allocation when:</p> <p>(i) the licensee is dealing for one or more customers, either before or as soon as possible after the transaction is effected; or</p> <p>(ii) the licensee is dealing for one or more customers and itself, before the transaction is effected.</p> <p>If a licensee discovers an error, either in the intended basis of allocation or in the actual allocation, it may recommence the allocation on a different and correct basis provided that a record of the reason for reallocation is made at the time of reallocation.</p> <p>Each allocation made by a licensee must be made in accordance with standards and procedures which are uniform for all allocations made by the licensee.</p>	Section 193 of the Code.
<p>A licensee must not aggregate an order of a customer with the order of another customer or of the licensee unless:</p> <p>(a) otherwise agreed between the licensee and the customer;</p> <p>(b) it is in the overall best interest of the customers concerned; or</p> <p>(c) any possible disadvantage has been disclosed to the customer concerned.</p> <p>When a licensee has aggregated an order for a customer transaction with an order of its own account transaction, or with another order for a customer transaction, then in the subsequent allocation:</p> <p>(i) it must not give unfair preference to itself or to any of those for whom it dealt; and</p> <p>(ii) if all orders cannot be satisfied, it must give priority to satisfying orders for customer transactions unless it believes on reasonable grounds that, without its own participation, it would not have been able to effect those orders either on such favourable terms or at all.</p>	Section 194 of the Code.
<p>Where a licensee deals with or for a customer, it must seek to provide best execution, unless there is a specific instruction, in writing, from the customer.</p> <p>A licensee provides best execution for a customer if:</p> <p>(a) it takes reasonable care to ascertain the price which is the best available for the customer in the relevant market at the time for transactions of the kind and size concerned; and</p>	Section 195 of the Code.

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- (b) unless the circumstances require it to do otherwise in the interests of the customer, it deals at a price which is no less advantageous to the customer.

A licensee may rely on another person who executes the transaction to provide best execution, but only if it believes on reasonable grounds that the other person will do so.

In applying best execution, a licensee must:

- (i) have regard to the best price, the likelihood of execution and settlement at that price, the costs of execution and the nature of the order; and
- (ii) leave out of account any charges disclosed to the client which it or its agent would make.

A licensee must establish and implement a best execution policy.

A licensee must not, unless otherwise agreed with a customer:

Section 196 of the Code.

- (a) advise the customer to deal or to switch within or between investments; or
- (b) in the exercise of the licensee's discretion, deal or arrange a deal or effect such a switch for the customer,

if the dealing or switching would reasonably be regarded as too frequent in the circumstances.

If a licensee or a person connected with the licensee intends to publish to customers a recommendation, or a piece of research or analysis, in relation to a particular investment, it must not:

Section 197 of the Code.

- (a) deal in the investment, or any related investment, on its own account; or
- (b) deal in the investment, or any related investment on behalf of the connected person,

until the customers for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it.

A licensee must establish, maintain and implement a conflicts of interest policy which shall:

Section 199 of the Code.

- (a) identify, with reference to the licensed business carried on by the licensee, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of its customers or any of them;
- (b) set out procedures for ensuring the fair treatment of its customers; and
- (c) if the licensee is a member of a group, take into account potential conflicts arising from its membership of the group.

A licensee must establish, and maintain systems and controls designed to ensure the effective implementation of its conflicts of interest policy.

A licensee must keep a record of any significant conflicts that arise in the conduct of its licensed business and the steps that it has taken to avoid or manage those conflicts of interest.

A licensee must:

Sections 201(1) of the Code.

- (a) keep safe, or arrange for the safekeeping by a suitable custodian of, documents of title or other ownership rights relating to customer investments; and
- (b) take reasonable steps to ensure that any customer investments that are registrable, are properly registered either in the customer's name or, where agreed with the customer, in the name of a suitable custodian or a nominee that is:
 - (i) chosen by the customer; or

Obligation	Statutory reference
(ii) a corporate nominee, the business of which is limited to the holding of investments and related activities.	
Where a licensee arranges for customer investments belonging to a customer to be registered in the same name as that in which the licensee's own investments, or the customer investments of another customer are registered, it must ensure that:	Section 201(2) of the Code.
(a) customer investments are separately identifiable from investments of the licensee; and	
(b) the customer investments of each customer are separately identifiable from each other.	
Where a licensee registers customer investments in the name of its subsidiary, the licensee must accept responsibility for the acts and omissions of the subsidiary.	Section 201(3) of the Code.
Where a licensee holds documents of title to customer investments, title to which passes by delivery, the licensee must ensure that the documents are stored in such manner as to minimise the risk of their loss due to theft, fire, flood or other physical damage.	Section 201(4) of the Code.
A licensee must establish and maintain systems and controls designed to minimise the risk of the loss or diminution of customer investments, through the misuse of the investments, fraud, inadequate administration or record keeping or negligence.	Section 201(5) of the Code.
A licensee must not:	Section 202 of the Code.
(a) use a customer's investments for its own account unless it has obtained that customer's prior written consent to do so; or	
(b) lend, or arrange the lending of customers' investments to another person unless:	
(i) the customer to whom the investment belongs has consented, in writing, and the loan is subject to appropriate documented terms and conditions;	
(ii) where customers' investments belonging to more than one customer are registered in the same name, each customer whose investments are so registered has consented, in writing, to the lending of customer investments registered in that name, and each customer's entitlement is clearly ascertained;	
(iii) adequate collateral is obtained and maintained for the duration of the loan, in accordance with any written instructions given by the customer; and	
(iv) the licensee arranges for all income, inclusive of dividends, fees or commissions, earned thereby (other than any fees payable to the licensee for arranging the loan) either to be paid to the customer directly or to be received by the licensee on the customer's account and treated as customer money, unless instructed otherwise by the customer.	

Contacts

A full list of contacts specialising in BVI law can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2023 MOURANT OZANNES ALL RIGHTS RESERVED