



Proposed Investment Business and Securities Legislation

Meet the Regulator

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HLSCC

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Proposed Investment Business and Securities Legislation

Aim of Legislation

Provide for regulation and supervision of investment business; and

Protect investors, and potential investors, in publicly traded/tradeable, securities issued by BVI companies

Proposed Investment Business and Securities Legislation

International Standards

Modern, competitive and compliant
with international standards:

IOSCO Objectives and Principles
of Securities Regulation, 2003;
and

OECD Principles of Corporate
Governance, 2004

Recent evaluations (KPMG, 2000
and IMF, 2004)

Benchmarking exercise

Proposed Investment Business and Securities Legislation

Policy Issues: Investment Business

Activities subject to licensing and consequences of conducting unlicensed business

Exemptions for certain activities/persons

Functions of Commission

Licensing criteria and procedures

Capitalisation and financial resource requirements for licensees

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Policy Issues: Investment Business

Reporting requirements

Notifications and prior approval of changes in directors, senior management and significant shareholders

Preparation and auditing of accounts

Systems of control requirements

Record keeping requirements

Market conduct, including advertising and cold calling



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Policy Issues: Investment Business

Requirements to carry PI and fidelity insurance

Handling, identification and segregation of client monies and assets

Disclosure to clients and conflicts of interest

Complaints procedures



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Policy Issues: Investment Business

Rules governing proprietary trading by
market intermediaries

Training and competence of staff



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Extent of Activities Covered

Proposed that it should be an offence for a person to carry on, or hold himself out as carrying on, investment business in or from within the BVI unless he is licensed under the new legislation or exempted from holding a licence



Proposed Investment Business and Securities Legislation

Extent of Activities Covered

Dealing in investments whether as
principal or agent

Arranging deals in investments

Managing investments

Promotion of investments

Provision of investment advice

Safeguarding and administering
investments

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Extent of Activities Covered

The definition of investment will be comprehensive and include shares, debentures, instruments giving title to investments, shares or units in a mutual fund, certificates representing investments, futures, options, interests in a partnership, contracts for differences, rights under a long term insurance policy and interests in investments



Proposed Investment Business and Securities Legislation

Activities to be Exempted

Dealing in instruments
creating/acknowledging own
indebtedness

Issuing, redeeming, etc own shares

Intra-group and joint enterprise deals

In connection with sale of goods and
supply of services



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Activities to be Exempted

Employee share schemes

Sale of body corporate

Trustees and personal representatives

Advice given in newspapers and
broadcasting services

Activities which are incidental to a
person's business



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Persons to be Exempted

Insurers

Insurance managers, brokers, etc

Government

Financial Services Commission

Public Authorities

Official Receiver or insolvency
practitioner, in the course of acting as
such



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Insider Trading

Creation of certain offences with respect to insider trading and other forms of market abuse (money laundering will be extended to proceeds of insider trading and market abuse)

Insider trading offence will only apply iro dealing in listed securities

Consideration to be other forms of market abuse



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Policy Issues: Securities

Legislation must make provision for companies offering shares to the public (IOSCO Principles 14 to 16)

No need to enact legislation in respect of a BVI company listed on an overseas exchange complying with international standards

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Policy Issues: Securities

Need to enact legislation in respect of a BVI company listed on an overseas exchange not complying with international standards or issuing shares without having an exchange listing

Legislation intended to control issuance and trading of shares in a BVI company not listed on an approved exchange



Proposed Investment Business and Securities Legislation

Policy Issues: Securities

Legislation will not apply to mutual funds registered or recognised under the mutual funds legislation

Prohibition on the establishment of an exchange without the consent of the Financial Services Commission



Proposed Investment Business and Securities Legislation

Policy Issues: Securities

Prohibition on the offering of shares (or securities) to the public otherwise than as permitted by the Bill (that is, restrictions on offers of securities to the public and conditions applicable to an offering of securities for public sale)



Proposed Investment Business and Securities Legislation

Principles for Issuers

There should be full, accurate and timely disclosure of financial results and other information which is material to investors' decisions



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Principles for Issuers

Disclosure:

Requirement to issue prospectus

Prospectus (form and content)

Rules for advertisements

Liability for mis-statements in
prospectuses

Additional filing requirements

Provision of information to shareholders

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Principles for Issuers

Holders of securities in a company should be treated in a fair and equitable manner:

Minority shareholder provisions (BVI BCA?)

Appropriate changes in application of BVI BCA to “public” companies (eg wrt acquisition of own shares, preemptive rights, shareholder meetings)

Proposed Investment Business and Securities Legislation

Principles for Issuers

Accounting and auditing standards should be of a high and internationally acceptable quality:

Preparation of financial statements

Applicable accounting standards

Appointment of an auditor

Approval of an auditor

Rights, powers and duties of an auditor

Annual reports and returns



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Possible Exemptions

Companies whose shares are traded on a recognised exchange should be subject to certain exemptions (at least with respect to shares that are listed on that exchange)

Shares of companies in recognised jurisdictions

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Process and Timescale

Focus Group: Discuss and agree Policy
Guideline

Draftsman: Draft legislation

Focus Group: Comment on draft legislation

Draftsman: Amend legislation

Workshop: Discuss proposed legislation

LEGCO: Enact legislation by 01/01/06