

# SIBA ROUND TABLE DISCUSSION

QUESTIONS AND ANSWERS BY THE REGULATORS

Meet the Regulator – 16 March, 2011

Panelists:

Glenford Malone

Kishelle Blaize

Allene Gumbs



# Overview

## FAQS covering:

- Licensing (foreign exchange, capital and PI requirements)
- Auditors
- Exemptions
- Authorised Representatives
- General

## Questions



**Q: Is a Fund Manager (licensed under MFA, 1996) who provides or wishes to provide investment advice required to be licensed under SIBA?**

- Yes, these are separate types of investment business activities



Q: Are SIBA licensees required to be capitalised and if so, what is the minimum capital requirement?

- Yes, all SIBA licensees are required to maintain adequate levels of capital.
- Capital resources at a level that is adequate to support the licensee's business (its nature, size, complexity, structure, diversity and risk profile)



Q: Are SIBA licensees required to have professional indemnity insurance and if so, what is the minimum coverage amount?

- Yes! SIBA licensees are required to maintain professional indemnity, at all times, taking into account the specifics (nature, size, complexity, structure and diversity) of its business.



Q: Is there a requirement for BVI regulated entities (funds and licensees) to appoint an auditor resident in the BVI to sign-off on the audited statements?

NO



Q: Are Licensees or public funds required to appoint an auditor and be audited?

Yes. Section 75 of SIBA



Q: Are private and professional funds required to appoint an auditor and be audited?

Unless granted an exemption pursuant to Regulation 10(1)(b) of SIBA, all Private and Professional Funds must appoint an auditor for the purposes of auditing its financial statements.





Q: Is there a requirement for auditors of SIBA licensees and funds to be approved?

- In the case of a Licensees and public funds the auditor that is proposed to be appointed must be an approved auditor.
- In the case of private and professional funds the auditor is not required to be approved.



Q: How does one become an approved auditor? Can I apply directly for my audit firm to be an approved auditor under SIBA?

- *Regulated person* to submit the application for the approval of the proposed auditor - section 75 of SIBA.
- Regulated Person to submit a completed form B-1 (Approved Persons Guidelines refer.)



## Q: What is the auditor's letter of consent?

- Indicates acceptance of appointment as auditor, the name of the fund, date of the financial statements and what auditing standards will be used.
- Contains a statement confirming that the auditor is aware of and agrees to fulfill its obligations pursuant to SIBA and the Regulatory Code.



Q: Are application fees and approval fees payable for the appointment of an approved auditor?

\$150 application fee for investment business licensee or public fund.

\$250 approval fee investment business licensee or public fund.



Q: Where can one obtain the list of approved auditors?

- FSC website [www.bvifsc.vg](http://www.bvifsc.vg)



Q: My previously approved firm may not qualify as an approved auditor in that my firm is not a member of one of the "recognised professional bodies" prescribed. Can my firm continue to audit the respective licensee or do I need to be approved under SIBA?

- Where the auditor was acting prior to SIBA he may continue for that licensee



Q: My Auditor does not belong to a professional body that is a recognised body pursuant to Section 56(1) of the Code. What should I do?

- Professional body outside those prescribed by Section 56(1)(a)-(f) may be recognised by the Commission on a case-by-case basis.



Q: What documents are required to be submitted to the Commission in respect of the proposed appointment of an audit firm already approved under Section 75 of SIBA.

- The Guidelines to the Approved Persons regime requires a completed form B-1 and supporting documents by every applicant seeking an investment business license.
- However, where the proposed auditor is an approved auditor pursuant to Section 75 of SIBA, the applicant would be required to submit only the completed form B-1.





# Q: What documentation is required for a change of Auditor?

- If the auditor has NOT previously been approved, Form B-1
- If the auditor was previously approved, Form B-2



# Q: Is there an exemption from the requirement to appoint an auditor to BVI Funds?

- Yes pursuant to Regulation 10(2) of the Mutual Funds Regulations



Q: Is there an exemption from the requirement to appoint an auditor to relevant licensees and public funds?

No. There are no provisions under:

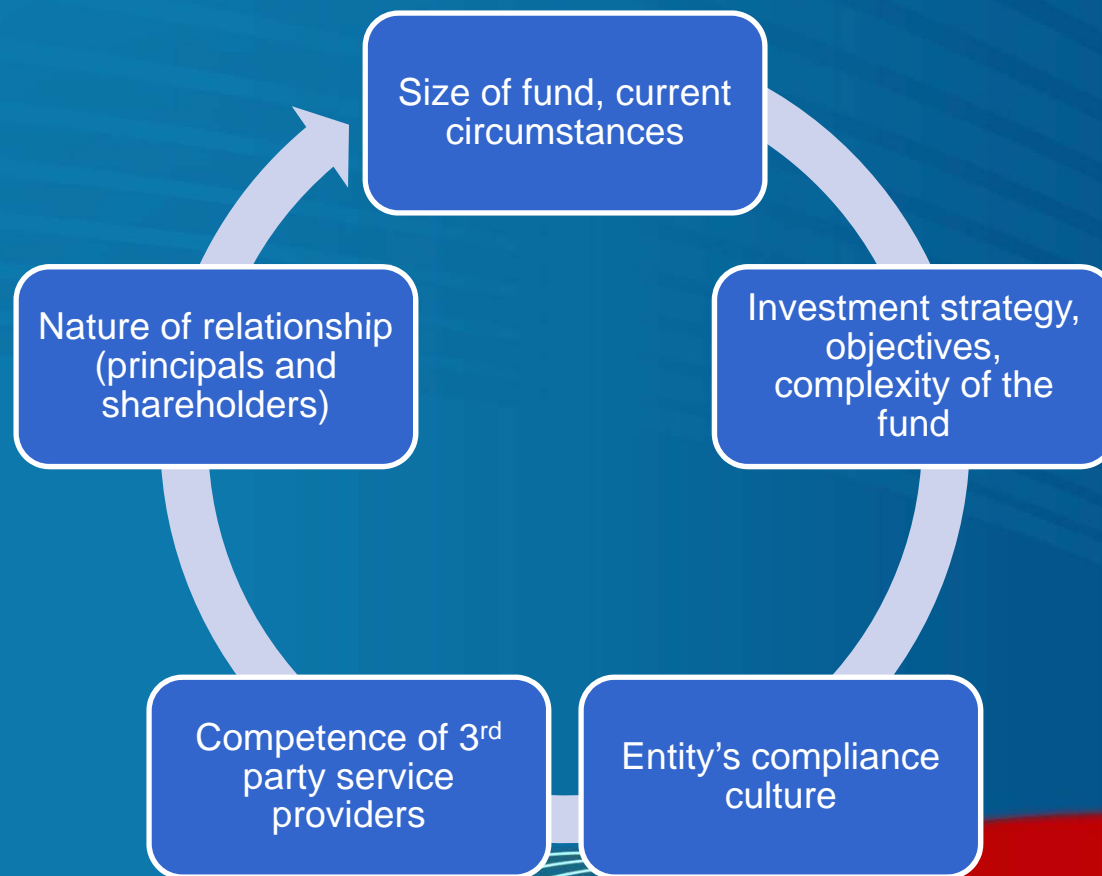
SIBA

the Mutual Funds Regulations, 2010 or  
the Financial Services (Miscellaneous  
Exemptions) Regulations, 2010

for licensees and public funds to be  
exempted from the requirement to appoint an  
auditor.



# Q: What criteria are used to determine whether a private or professional fund qualifies for an exemption from the requirement to appoint an auditor?



Q: How can a fund request an exemption from the requirement to appoint a Custodian and/or a Manager?

A request in writing to the Commission in accordance with regulation 7(2) or 16(2) of the Mutual Funds Regulations, 2010.



Q: If a fund was prior to the enactment of the Mutual Funds Regulations, 2010, recognized by the Commission without having appointed a Manager or Custodian, should that fund apply to the Commission for an exemption?

Yes. All funds including existing funds are required to have a manager and custodian.



## Q: In what circumstance should a fund apply for an exemption from the requirement to appoint a Custodian?

- funds who have appointed Prime Brokers;
- feeder funds in a master feeder/structure;
- funds operating as fund of funds;
- funds in the process of winding down; and
- funds who invest in esoteric assets do not require typical custody arrangements.



# Q: What information should a fund with a submit when requesting an exemption from the requirement to appoint a Custodian?

## Prime Broker

- request
- Banking Details
- Broker details

## Feeder Fund

- request
- Banking Details
- Master fund details

## Fund of Funds

- request
- Banking Details
- Custody details underlying fund





# Q: What information should a fund submit when requesting an exemption from the requirement to appoint a Custodian?

## Esoteric Assets

- request
- Banking Details
- Who maintains records of the fund's investments

## Winding down

- request
- Banking Details
- Board resolution
- Current circumstances of the fund

## Q: What information should a fund submit when requesting an exemption from the requirement to appoint a Fund Manager?

- A letter of request setting out the basis for the exemption;
- Confirmation and biographical details (resume) of the person(s) who will fulfill the fund's management function; and



Q: Can a company that is currently engaged in another type of business be certified as an Authorised Representative?

- No. A separate subsidiary should be established.



## Q: What is the role of an Authorised Representative?

- Act as the main intermediary between the licensee or mutual fund and the Commission.
- Acceptance of service of notices and other documents
- Keep records in the BVI
- Pay fees on behalf of licensees.



# Q: Can a private or professional have a corporate director?

- Yes
- Directors different from individual Directors.
- Investment Manager as Director



**Q: Do funds which are closed to new investors or in the process of winding down need to comply with SIBA requirements to have 2 directors, an authorised representative, and functionaries?**

- The previously issued FAQs set out the specific scenarios in which a fund that is closed to new investors or winding down is not required to comply with SIBA, those scenarios are limited to the requirement to amend its constitutional documents to comply with SIBA.



# Q: What are Commission requirements in order to give its approval for a SIBA licensee to incorporate, form or acquire a subsidiary?

- A letter of application requesting prior approval
- Details of the subsidiary (i.e. name, intended domicile, regulatory status, description of its business)
- Details of the intended key staff (incl experience and educational qualifications)
- A description of how oversight of the subsidiary is to be achieved by the Licensee;
- Identification and mitigation measures of potential risks to the licensee.



QUESTIONS?

