

## **SUBSIDIARY LEGISLATION**

**Segregated Portfolio Companies Regulations, 2005 (S.I. 2005 No. 96)**

**VIRGIN ISLANDS**

**SEGREGATED PORTFOLIO COMPANIES REGULATIONS, 2005**

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**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2005 NO. 96**

**BVI BUSINESS COMPANIES ACT, 2004  
(No. 16 of 2004)**

**Segregated Portfolio Companies Regulations, 2005**

[Gazetted 22<sup>nd</sup> December, 2005]

The Governor in Council, acting on the advice of the Commission and in exercise of the powers conferred by section 159 of the BVI Business Companies Act, 2004 (No. 16 of 2004), makes the following Regulations:

**PART I**

**PRELIMINARY PROVISIONS**

1. These Regulations may be cited as the Segregated Portfolio Companies Regulations, 2005. Citation.

**PART II**

**MUTUAL FUNDS**

2. In this Part, Interpretation for this Part.

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

“mutual fund” means a company that is recognised as a professional or private fund, or that is registered as a public fund, under the Mutual Funds Act, 1996; No. 6 of 1996

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

”Mutual Funds Act” means the Mutual Funds Act, 1996.

Application for approval to incorporate or register mutual fund SPC.

**3.** (1) An application to the Commission for approval to incorporate or register a company as a segregated portfolio company that is, or on its incorporation will be, a mutual fund shall include the following information:

- (a) the name, or proposed name, of the company;
- (b) details of the person who is, or who will be appointed as, the administrator of the 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 company to act in respect of the portfolio.

(2) An application under sub-regulation (1) for approval to incorporate a company as a segregated portfolio company shall be accompanied by

- (a) an application under the Mutual Funds Act for the recognition of the company as a private or professional fund or for the registration of the company as a public fund;
- (b) subject to sub-regulation (3), the documents required by the Mutual Funds Act to accompany such an application; and
- (c) a copy of the offering document for each of the initial segregated portfolios that it is intended will be created.

(3) An application under sub-regulation (1) for approval to incorporate a company as a segregated portfolio company shall, in place of the constitutional document required to be submitted by the Mutual Funds Act, be accompanied by a copy of the memorandum and articles proposed for the company.

(4) An application under sub-regulation (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 six 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 for each of the initial segregated portfolios that it is intended will be created.

- 4.** (1) A mutual fund SPC shall at all times have one or more administrators, managers and custodians, and may appoint one or more investment advisors. Functionaries of mutual fund SPC.
- (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 responsibilities and duties in respect of each such segregated portfolio.

Audit of financial statements.

**5.** (1) A mutual fund SPC shall have an auditor who shall be responsible for auditing its financial statements.

(2) The audited financial statements of a mutual fund SPC shall be filed with the Commission within 6 months of the end of its financial year.

Creation of segregated portfolios.

**6.** (1) Subject to sub-regulation (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; and

(b) a mutual fund SPC that is recognised as a professional or private 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 Mutual Funds 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 Mutual Funds Act, 1996.

No. 6 of 1996

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

(a) the offering document for the segregated portfolio is in substantially the same form as the offering document submitted to the Commission under regulations 3(2) or 3(4); and

(b) 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 sub-regulation (1) shall be in the approved form.

Notification of creation of segregated portfolios.

**7.** (1) A mutual fund SPC to which regulation 6(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 company to act in respect of the segregated portfolio; and
- (d) the date of creation of the segregated portfolio.

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

(3) A mutual fund SPC that contravenes sub-regulations (1) or (2) commits an offence and is liable on summary conviction to a fine of \$5,000.

### **PART III**

#### **GENERAL**

**8.** (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. Control over names.

(2) A segregated portfolio company that fails to comply with a notice issued by the Commission under sub-regulation (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

**9.** (1) Subject to sub-regulation (2), a segregated portfolio company shall, by written notice in the approved form, notify the Commission of any change in information that it is required to submit to the Commission under these Regulations, within 14 days of the date that the information changed. Notification to Commission of changes in information submitted.

(2) Sub-regulation (1) shall not apply to information provided to the Commission under regulation 3(4)(b) or (c).

**10.** The fees and penalties specified in Schedule 1 shall be payable to the Commission. Fees.

## SCHEDULE

### FEES PAYABLE BY A SEGREGATED PORTFOLIO COMPANY

Fee (\$)

#### **PART I: APPLICATION FEES**

1. For an application for approval to incorporate or register a company as a mutual fund SPC under section 135 of the Act, an application fee comprising the total of:  
  
In respect of the company 1,000  
  
In respect of each segregated portfolio included in the application 250
2. For an application for approval to create one or more segregated portfolios under regulation 6(1)(a) or regulation 6(1)(b)  
  
In respect of each segregated portfolio included in the application, an application fee of 250
3. For notification of the creation of one or more segregated portfolios under regulation 7(1)  
  
In respect of each segregated portfolio included in the notification, an application fee of 250

#### **PART II: INITIAL FEES**

Subject to paragraph 8, a mutual fund SPC shall pay the following fees:

4. Where the mutual fund is incorporated or registered on or before 30<sup>th</sup> June in any year, an initial fee on incorporation or registration comprising the total of:  
  
In respect of the company 1,000  
  
In respect of each segregated portfolio approved 100



5. Where the mutual fund is incorporated or registered on or after 1<sup>st</sup> July in any year, an initial fee on incorporation or registration comprising the total of:
- |   |     |
|---|-----|
| In respect of the company               | 500 |
| In respect of each segregated portfolio | 50  |
6. On approval being granted to create one or more segregated portfolios under regulation 6(1)(a) or regulation 6(1)(b), an initial fee in respect of each segregated portfolio approved:
- |   |     |
|---|-----|
| (a) where the creation of the segregated portfolio is approved on or before 30 <sup>th</sup> June | 100 |
| (b) where the creation of the segregated portfolio is approved on or after 1 <sup>st</sup> July   | 50  |
7. The total initial fees payable by a mutual fund SPC in any year shall not exceed the sum of \$10,000

**PART III: ANNUAL FEES**

A mutual fund SPC shall pay an annual fee on or before 31<sup>st</sup> March of each year commencing in the year following its incorporation or registration comprising the total of:

In respect of the company	1,000
In respect of each segregated portfolio in existence on 31 <sup>st</sup> December of the previous year	100

The total annual fee payable by a mutual fund SPC in any year shall not exceed the sum of \$10,000

#### **PART IV: LATE PAYMENT PENALTIES**

A mutual fund SPC that fails to pay its annual fee in full on or before 31<sup>st</sup> March in any year shall, in addition to the annual fee, pay a penalty of \$250 for each month, or part thereof, that the fee, or any part, remains outstanding.