

BRITISH VIRGIN ISLANDS INVESTMENT FUNDS

Introduction

The principal legislation pertaining to funds in the British Virgin Islands (“BVI”) is the Securities and Investment Business Act (“SIBA”) and regulations thereunder (the “Regulations”). This Act sets out the requirements for the recognition and registration of funds incorporated or formed under the laws of the BVI or otherwise carrying on business from within the BVI.

Funds in the BVI may be incorporated as business companies or formed as partnerships or unit trusts. The business company, being a corporate vehicle, is the most common structure used to form a fund in the BVI. Fund companies can be incorporated as segregated portfolio companies.

Types of BVI Investment Funds

In the BVI there are five types of regulated investment funds:

- The Incubator Fund
- The Approved Fund
- The Private Fund
- The Professional Fund, and
- The Public Fund.

Incubator Fund

The incubator fund (the “Incubator Fund”) is geared towards start up investment managers who wish to offer investments into a regulated investment fund at reasonable costs to build up their track record. The key characteristics of an Incubator Fund are:

- The total number of investors is restricted to 20,
- An investor must initially invest at least USD20,000,
- The net assets of the Incubator Fund must not exceed USD20,000,000 (or its equivalent in any other currency),
- No requirement to have an offering document in place,
- No requirement to have third party service providers appointed,
- No requirement to file audited financial statements, and

The life span is limited to 2 years (or 3 if an extension is granted) after which an Incubator Fund may be converted into a Professional Fund, a Private Fund or an Approved Fund. Alternatively, an Incubator Fund can also be converted into an unregulated closed-ended fund.

An Incubator Fund must:

- Have two directors, one of which must be an individual,
- Have an authorised representative. The authorised representative will serve as a conduit between the fund and the BVI Financial Services Commission (the “FSC”),
- Submit financial statements annually (which need not be audited),
- Submit returns to the FSC regarding its status, i.e. the number of investors, total investments, aggregate subscriptions and redemptions, net asset value of the fund and details of any significant investor complaints; and
- Notify the FSC within 14 days of any changes to the information provided in the application or in relation to any matter which is likely to have a material impact on the fund.

Approved Fund

The approved fund (the “Approved Fund”) is geared towards ‘family and friends’ funds managers. Its key characteristics are:

- The total number of investors is restricted to 20,
- Net assets of the Approved Fund must not exceed USD100,000,000 (or its equivalent in any other currency),
- No minimum investment,
- No requirement to have an offering document in place,
- No requirement to have third party service providers appointed, except for appointment of a fund administrator which will, in short, provide the Approved Fund with registrar and transfer agent and net asset value calculation services, and
- No requirement to file audited financial statements
- Although not required by law, in practice the Approved Fund will often have a third-party investment manager appointed.

Requirements for an Approved Fund are:

- Have two directors, one of which must be an individual,
- Have an authorised representative.
- Submit financial statements annually (which need not be audited),
- Submit returns to the FSC regarding its status, i.e. the number of investors, total investments, aggregate subscriptions and redemptions, net asset value of the fund and details of any significant investor complaints; and
- Notify the FSC within 14 days of any changes to the information provided in the application or in relation to any matter which is likely to have a material impact on the fund.

Professional Fund

A professional fund is a fund whose shares are made available only to professional investors and the initial investment of each investor in the fund (other than certain “exempted investors”) is not less than US\$100,000 or its equivalent in another currency. “Exempted investors” is narrowly defined and includes employees of the manager or promoter of the fund and fund functionaries.

A professional investor is defined as a person (i) whose ordinary business involves, whether for that person’s own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund; or (ii) who has signed a declaration that he, whether individually or jointly with his spouse, has net worth in excess of US\$1,000,000 (or its equivalent in another currency) and that he consents to being treated as a professional investor.

Requirements for a for Professional Funds are:

- Have two directors, one of which must be an individual,
- Have an investment manager, funds administrator, custodian (or prime broker) and an auditor appointed (subject to certain exemptions),
- Have an authorised representative,
- Submit audited financial statements annually, and
- Notify the FSC of certain changes as specified in the relevant legislation.

Private Fund

A private fund is a fund whose constitutional documents specify either that it will have no more than 50 investors or that the making of an invitation to subscribe for or purchase shares issued by the fund is to be made on a private basis only. An invitation made on a “private basis” includes an invitation which is made (a) to specified persons and is not calculated to result in shares becoming available to other persons or to a large number of persons; or (b) by reason of a private or business connection between the person making the invitation and the investor

Requirements for a Private funds are:

- Have two directors, one of which must be an individual,
- Have an investment manager, funds administrator, custodian (or prime broker) and an auditor appointed (subject to certain exemptions),
- Have an authorised representative,
- Submit audited financial statements annually, and
- Notify the FSC of certain changes as specified in the relevant legislation.

The Public Fund

The Public Fund (the “Public Fund”) is geared towards investment managers seeking to offer a retail investment fund. The regulatory regime applicable to a Public Fund is considerably more complex than for any other regulated BVI fund. However, there are no restrictions on the type of investors, number of investors, marketing to investors or the maximum value of assets held by the Public Fund.