

BRITISH VIRGIN ISLANDS: NEW REGULATIONS FOR CLOSED-ENDED FUNDS

On December 2019, the Securities and Investment Business Act (SIBA) was amended to bring private investment funds (traditionally known as closed-ended funds) under the regulatory remit of the BVI Financial Services Commission (the “Commission”). Private investment funds are similar in operation to BVI private and professional funds. Private investment funds however do not offer investors a right to redemption of their interest on demand.

The Amendment Act is a response to demands by the Council of the European Union’s Code of Conduct for Business Taxation to regulate closed-ended funds in the BVI.

Definition of Private Investment Funds

Under the Amendment Act and the Private Investment Funds Regulations, 2019 (the “PIF regulations”) most closed-ended funds will fall under the newly created category of regulated funds referred to as private investment funds (“PIF”).

A PIF is defined as: “a company, partnership, unit trust or any other body that is incorporated, registered, formed or organised, whether under the laws of the BVI or of any other country, which

- collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; and
- issues fund interests, which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, partnership, unit trust or other body.

An entity that does not meet these two criteria (or does not carry on business as a private investment fund in or from within the BVI) will not be restricted from conducting its business as a collective investment scheme under the new PIF Regulations.

Regulatory Requirements for PIFs

The Amendment Act and the PIF regulations requires a PIF to seek regulatory approval from and submit an application for recognition as a PIF to the Commission.

The Commission will approve a PIF by way of issuing a certificate of recognition, if the PIF:

- is lawfully incorporated, registered, formed or organised under the laws of the BVI or under the laws of a country outside the BVI; and
- its constitutional documents specify that:
 - the PIF is not authorised to have more than 50 investors; or
 - an invitation to subscribe for, or purchase, PIF interests issued by the PIF shall be made on a private basis only; or
 - the PIF interests of the fund shall be issued only to professional investors with an initial investment of each professional investor, other than exempted investors, of not less than US\$100,000 (or its equivalent in another currency).

Ongoing Obligations for PIFs

PIFs will be required to comply with several ongoing obligations, including (but not limited to):

- to have at all times “appointed persons” responsible for undertaking (i) the management of fund property; (ii) the valuation of fund property and (iii) the safekeeping of fund property;
- to have at all times an “authorised representative” in the BVI;
- if structured as a company, to have at all times at least two directors, at least one of whom must be an individual;
- the offering document or term sheet shall contain the regulatory disclosures required by the PIF Regulations;

- to maintain a clear and comprehensive policy for the valuation of the property of the PIF;
- to provide notification to the Commission within 7 or 14 days of certain relevant changes in the PIF structure or documents; and
- to prepare financial statements for each financial year in accordance with one of the accounting standards outlined below:
 - the International Financial Reporting Standards;
 - UK Generally Accepted Accounting Principles;
 - US Generally Accepted Accounting Principles;
 - Canadian Generally Accepted Accounting Principles; or
 - any other internationally recognised and generally accepted accounting standards equivalent to those listed.
- to have its annual financial statements audited by an auditor in accordance with one of the following standards:
 - US Generally Accepted Auditing Standards;
 - International Standards on Auditing (UK);
 - International Standards on Auditing;
 - Hong Kong Standards on Auditing; or
 - Canadian Auditing Standards.

Audited financial statements must be submitted **within six (6) months** after the PIF's financial year end, unless granted an exemption from the requirement for a particular financial year or an extension of time to submit the financial statements for a particular year.

Transitional Provisions

A transitional period for PIFs is in place from 31st December 2019 to 1st July 2020. Entities operating as private investment funds within the transitional period must make an application for recognition before or by 1st July 2020. After the transitional period has expired, the requirements of the Amendment Act will be fully enforced and any closed-ended fund operating as a PIF that has not sought recognition as a PIF by 1st July 2020, will be considered to be conducting unauthorised financial services business and will be subject to enforcement action.

How Can Quijano & Associates (BVI) Limited Help You?

All closed-ended funds will have to properly assess their structures to undertake all necessary steps to comply with the Amendment Act and the PIF regulations during the transition period which ends 1st July 2020.

Quijano & Associates (BVI) Limited is ready to assist you to bring your closed-ended funds in line with these new regulatory requirements.