COLLAS CRILL

BVI incubator and approved funds

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Introduction

The BVI's incubator and approved funds continue to be extremely popular and cost-effective for fund start-ups and emerging managers.

The BVI is a key offshore jurisdiction for open-ended investment funds and has implemented updates to the incubator and approved fund regime to bring it in line with the most up to date international regulatory standards and to secure its recognition by the EU as a cooperative jurisdiction for tax purposes. This makes it particularly attractive jurisdiction for investors, and consequently, for managers seeking to raise funds.

The Incubator Fund

The incubator fund is specifically aimed at start-up funds looking to establish a track-record over the first two to three years with limited regulatory requirements. After an initial incubation period of two years (with a possible one year extension) the incubator fund can be converted into one of the BVI's other fully fledged open ended funds (the approved, private, professional or public fund).

Restrictions

The incubator fund is limited to:

- having no more than 20 sophisticated investors;
- each investor investing a minimum of US$20,000; and
- having assets not exceeding US$20m.

The Approved Fund

The approved fund is aimed at funds with a private offering which wish to operate on a longer term basis, without the requirement to convert after two years. Although there is no requirement to convert, an approved fund is able to convert to a more heavily regulated fund product, should it approach the point were it may exceed the limitations of the approved fund product.

Restrictions

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The approved fund is limited to:

- having no more than 20 investors; and
- having assets not exceeding US$100m.

Time to launch

One of the key attractions of both the incubator and approved fund is the fast approval time. Once a completed application form has been submitted to the Financial Services Commission (FSC), provided no communication to the contrary has been received within two business days, the fund may begin operating.

Regulatory requirements

In keeping with the cost-efficient approach to these vehicles and recognising that they are subject to restrictions, these fund products are subject to light regulatory but maintain best practice in international standards.

Valuation of fund property

Incubator and approved funds are required to:

- maintain a clear and comprehensive policy for the valuation of fund property which complies with certain requirements (including requiring valuations to be undertaken at least annually) with procedures sufficient to ensure that the valuation policy is effectively implemented;
- ensure that the fund property is valued in accordance with the valuation policy;
- ensure that the persons controlling the fund's investment function are independent form the persons controlling the valuation process and where the persons controlling the fund's investment function do have involvement in the valuation process, ensure that conflicts are addressed and managed and that they are disclosed to investors.

Segregation of assets

Incubator and approved funds are required to have arrangements in place of the safekeeping of fund property, which include provisions for the appropriate segregation of fund property.

Service provider requirements

Service provider requirements are minimal. Each incubator or approved fund is required to have:

- a minimum of two directors, at least one of which must be an individual; and

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- a registered agent and authorised representative in the BVI.

The approved fund is also required to have a fund administrator at all times. In practice, many incubator fund will also deal with the requirements regarding valuation of fund property by appointing a fund administrator to independently value assets.

Offering documents and constitutional documents

Neither incubator nor approved funds are required to have comprehensive offering documents and may operate with short-form term sheets, provided that investors are provided with a summary of the investment strategy and the prescribed investment warnings.

Reporting

Incubator funds are required to file with the financial services commission (FSC) a semi-annual report no later than 31 July and 31 January in each year confirming financial information in relation to the fund and an annual return no later than 31 July in each year confirming that the fund satisfies the requirements of an incubator fund.

Approved funds are required to file with the FSC an annual return no later than 31 January in each year confirming financial information in relation to the fund and confirming that the fund continues to satisfy the requirements of an approved fund.

Incubator and approved funds are required to file with the FSC unaudited financial statements within six months of the end of the fund's financial year.

Anti-money laundering

Incubator and approved funds are subject to the BVI anti-money laundering regime and are required to have in place anti-money laundering policies and procedures and conduct client due diligence on their investors. In practice most incubator and approved funds will rely on the fund administrator for the day to day performance of these functions.

AEOI reporting

Incubator and approved funds will be BVI reporting financial institutions for the purposes of compliance with the US Foreign Account Tax Compliance Act (FATCA) and the OECD's common reporting standard for automatic exchange of financial account information (CRS) and the intergovernmental agreements and domestic legislation implementing FATCA and CRS in the BVI (AEOI). Incubator and approved funds will be required to:

- appoint individuals as AEOI officers;

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- register with the IRS and obtain a GIIN;
- register with the BVI International Tax Authority on their AEOI portal (BVI FARS);
- implement AEOI plicie and procedures;
- include relevant disclosures in term sheets/ offering documents and self-certifications in subscription forms;
  collect information on investors; and
- report on an annual basis.

Launching an incubator or approved fund

If you are interested in launching an incubator or approved fund or would like more information, please contact your usual Collas Crill contact.

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