

BVI investment funds: Approved manager regime

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Overview

In the British Virgin Islands (BVI), the provision of investment advice and/or acting as fund manager is a regulated activity under the Securities and Investment Business Act, 2010 (**SIBA**). Prior to the enactment of SIBA, BVI companies were often used as investment managers, or as fund managers in a private equity/closed end fund structures, as licensing was only required where the entity to whom the BVI company provided services was within the definition of "mutual fund" in the BVI. As a result, the BVI company often fell outside the regulatory regime.

With the enactment of SIBA the test of whether a BVI entity was required to have a license or not moved from one which was concerned with the nature of the person to whom the services were supplied to a test which examined the nature of the services provided. As one would imagine, this had the effect of requiring many BVI companies to need a license where prior to SIBA none was required.

Under SIBA, in limited circumstances, an exemption is available from the requirement to be licensed where the BVI company does not otherwise carry on investment business and the BVI company does not receive any remuneration, directly or indirectly, for providing the investment advice. However, the condition that no remuneration be paid makes these exemptions not particularly useful.

Approved Manager's Regime

To address this issue the BVI introduced the Approved Manager's regime in 2012^[1]. An Approved Managers license is a short form, streamlined license designed for cases where a full management license is unnecessary under SIBA. The licensee must be a BVI company (or limited partnership) have 2 directors (need not be BVI residents) and a licensed authorized representative in the BVI. There are no "requirements" as to the directors other than they need to be fit and proper, and this is by way of a self declaration.

An Approved Manager can act as manager or advisor to any number of incubator, approved, private or professional funds recognised under SIBA, as well as funds domiciled outside of the BVI in a Recognised Jurisdiction^[2] and closed ended funds domiciled in the BVI or in a Recognised Jurisdiction, if they have the key characteristics of a private or professional fund.

The Approved Manager is restricted to acting for entities where, in the case of open ended funds, aggregate assets under management are less than US\$400 million, or in the case of closed end funds, aggregate capital commitments are less than US\$1 billion

Otherwise, an Approved Manager is required by the Regulations to:

- Notify the Financial Services Commission ("Commission") of any change to any of the information submitted to the Commission in its application within 14 days
- Prepare and file annual financial statements to the Commission (with no requirement for an independent audit)
- File annual returns with the Commission by 31 January each year

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Should you have any question about investment management in the BVI or in the Approved Managers license in particular please do not hesitate to get in touch.

[1] Further amendments were made in 2014.

[2] Argentina, Australia, Bahamas, Bermuda, Belgium, Brazil, Canada, Cayman Islands, Chile, China, Curacao, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Ireland, Isle of Man, Italy, Japan, Jersey, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, Portugal, Singapore, Spain, South Africa, Sweden, Switzerland, United Kingdom and the United States of America