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BVI fund overview

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In the British Virgin Islands, investment funds are regulated by the BVI Financial Services Commission (FSC) under the BVI Securities and Investment Business Act, 2010 (SIBA) and the Mutual Fund Regulations, 2010.

SIBA defines a fund as any company, partnership or unit trust which:

- collects and pools funds for the purpose of collective investment; and
- issues shares (or similar interests) that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or part of the net assets of the company, partnership or unit trust.

The above definition is inclusive and as a result closed-ended funds are outside the scope of regulation because the investors do not have the right to demand a redemption of their interest.

While there are three types of funds set out under the SIBA; public funds, private funds and professional funds; private and professional funds are by far the most popular.

Private fund: a fund whose constitutional documents specify that either:

(a) it will have no more than 50 investors; or

(b) the making of an invitation to subscribe for interests is to be made "on a private basis", i.e. the invitation is made (i) to specified persons (however described) and is not calculated to result in shares becoming available to other persons or to a large number of investors, or (ii) by reason of a private or business connection between the person making the invitation and the investor.

Professional fund: a fund that is only available to professional investors (i.e. persons (i) whose ordinary business involves, whether for its own account or the account of others, the acquisition or disposal of property of the same kind as a substantial part of the property of the fund, or (ii) whose net worth (whether individually or jointly with his or her spouse) exceeds US$1,000,000 and who consents to being treated as a professional investor). A professional investor's initial investment must be at least US$100,000 or its equivalent in another currency.

Both a private fund and a professional fund are very similar from a regulatory and cost perspective. However, a professional fund can prove useful as it may carry on business for up to 21 days prior to being recognised by the FSC provided that the application for recognition is submitted to the FSC within 14 days of the launch of the fund.

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The recognition or registration procedure for funds with the FSC is relatively straightforward requiring the submission of:

- evidence of the formation of the entity (i.e. copies of the certificate of incorporation and memorandum and articles of association);
- completed application form and offering document; and
- evidence of the type of fund, for instance, an extract of the subscription agreement showing the professional investor declaration.

Any private or professional fund that intends to make an offer of its interests or shares must include the prescribed investment warning in a prominent place in the offering document. The subscription agreements must include a written acknowledgement from any new investor that it has received, understood and accepted the investment warning. Professional funds should also include statements in their constitutional documents as to its professional fund status.

A private or professional fund must appoint a manager, an administrator and a custodian (although application may be made to the FSC to exempt a fund from appointing a manager and/or custodian). Such funds are also required to have 2 directors but they need not be resident in the BVI and appoint a local authorised representative who will accept service on behalf of the fund in the BVI.

Ongoing regulatory requirements for professional or private funds include:

- notice to the FSC within 14 days of any change to the composition of the board, change in place of business and amendment of constitutional documents and new or amended offering documents;
- notice to the FSC at least 7 days prior to the appointment of any new functionary (including custodians, administrators, prime brokers and managers) and, in the case of a functionary ceasing to act, notice within 7 days of the cessation or resignation;
- filing audited accounts within 6 months of the financial year end;
- filing annual returns by 30 June each year;
- notice to the FSC of any material change to the nature and scope of business as soon as reasonably practicable; and
- payment of annual fees.

Once recognised, the fund is then subject to the supervision of the FSC which is authorised under SIBA to direct the fund to furnish information or provide access to any records, books or other documents which are deemed necessary to ascertain compliance with SIBA.

SIBA further provides that any fund's certificate of recognition may be cancelled or made subject to conditions if, inter alia, the fund has breached any regulations or conditions of its certificate, has been convicted of an offense, is carrying on business in a manner detrimental to its investors or to the public interest, or is declared bankrupt or is being wound up or dissolved.

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In addition to the relatively straight forward regulatory regime and application process described above, the BVI offers other benefits such as:

- Statutory exemption from local taxation. There is no requirement or need to obtain any certificate or undertaking to that effect.
- No requirement for local audit sign-off.
- The BVI is well known as a cost effective jurisdiction for incorporations and the fees payable to the FSC in connection with the recognition/registration of a fund are comparatively low when considered against other offshore fund jurisdictions.
- BVI company memorandum and articles of association may be drafted to allow amendments to be made by a resolution of the directors. Shareholder approval would not be required unless the proposed amendments varied shareholder rights.

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