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A guide to the BVI approved manager regime

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On 18 February 2020, the EU recognised the BVI as a fully co-operative tax jurisdiction in line with EU good-governance standards. This recognition, together with the flexible and cost effective approved manager regime, makes the BVI an ideal jurisdiction for emerging managers wanting to set up a new manager or adviser.

The BVI approved manager regime is specifically designed for emerging managers who are seeking to establish themselves in an internationally recognised financial centre with appropriate levels of regulatory supervision.

This guide outlines the eligibility criteria for an approved manager, the obligations of the role and the steps you need to take to apply for approval.

Restrictions on operation of an approved manager

In order to be eligible for approval as an approved manager, an applicant must be a BVI business company or limited partnership.

The approved manager must have a minimum of two directors or, for a limited partnership, a general partner with a minimum of two directors. There are no stipulations regarding the qualifications of the directors other than that they need to self-certify as fit and proper in accordance with Schedule 1A of the Regulatory Code (**Fit and Proper**). Each person who holds a significant interest (ten per cent or greater) in the approved manager must be Fit and Proper.

Significantly, the approved manager regime in the BVI does not require any capital adequacy or professional indemnity insurance requirements and is exempt from the requirement to appoint a compliance officer and establish and maintain a compliance procedures manual.

An approved manager is restricted to having assets under management of less than US$400 million, or, where it is managing only closed-ended funds, those funds having aggregate capital commitments ofless than US$1billion.

Permissible roles of an approved manager

An approved manager may act as an:

1. investment adviser or investment manager to a private fund or professional fund;
2. investment adviser or investment manager to a closed-ended fund that is incorporated as a company, formed as a partnership or organised as a trust, under the laws of the BVI or any recognised jurisdiction and has the characteristics of a private or professional fund;

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3. investment adviser or investment manager to a person who is affiliated to a fund structure falling within paragraphs 1 or 2 above;
4. investment adviser or investment manager to any fund that is incorporated as a company, formed as a partnership or organised as a trust, under the laws of a recognised jurisdiction and has equivalent characteristics to a private or professional fund;
5. investment adviser or investment manager to such other person as the BVI Commission may approve on a case by case basis upon application (most commonly used for managed accounts); and
6. investment manager or investment adviser to a person that:
7. is incorporated as a company, formed as a partnership or organised as a trust, outside the BVI in a non-recognised jurisdiction;
8. has equivalent characteristics to a private fund, professional fund or a closed-ended fund; and
9. invests all or a substantial part of its assets in one or more of the structures falling within paragraph 1 or 2 above.

Ongoing obligations

An approved manager must undertake, among other things, to do the following:

- At all times have at least two directors, one of whom shall be an individual;
- Appoint and at all times engage an authorised representative;
- Notify the BVI Commission of any change to any of the information submitted to the FSC in its application within 14 days;
- Notify the BVI Commission of any matter in relation to the approved manager or the approved manager's conduct of a relevant business, which has or is likely to have a material impact or a significant regulatory impact with respect to the approved manager or the relevant business;
- Prepare and file annual financial statements with the BVI Commission (with no requirement for an independent audit) within six months of the end of its financial year;
- File annual returns with the FSC by 31 January of each year;
- Comply with the BVI's anti-money laundering regime including the appointment of a money laundering reporting officer and the adoption of appropriate policies and procedures; and
- Comply with the BVI regime for Automatic Exchange of Information (AEOI) including FATCA and the OECD Common Reporting Standard including registration with the U.S. Internal Revenue Service and the BVI International Tax Authority, adoption of necessary policies and procedures and, if applicable, reporting.

Exception to the economic substance rules

The activities of an approved manager do not fall within the definition of fund management business and so there is currently no obligation for an approved manager to have substance in the BVI, other than the engagement of its registered office and authorised representative. This makes an approved manager a more cost-effective option when comparing it to similar products.

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Application process

Timing

An application for approval as an approved manager must be submitted to the BVI Commission at least seven days prior to the intended date for the commencement of relevant business, unless the BVI Commission accepts in writing a shorter period. The approved manager may commence business if the BVI Commission does not raise any questions in the seven days following submission of a completed application.

Application

An application for approval as an approved manager must be signed by a director or general partner of the applicant, accompanied by the following:

1. A copy of the applicant's constitutional documents;
2. The details of each director or general partner and senior officer of the applicant and each person who owns or holds an interest in the applicant;
3. A written declaration by the applicant that each director or general partner and senior officer of the applicant and each person who owns or holds a significant interest in the applicant is fit and proper in accordance with S.I. No. 60 Schedule 1A of the Regulatory Code, 2009;
4. The number and details of the funds for which the applicant intends to act upon commencement of relevant business;
5. The date on which the applicant intends to commence relevant business;
6. A copy of the investment advisory or investment management agreement between the applicant and each person for whom the applicant intends to act upon commencement of relevant business;
7. Written confirmation as to which individual will be carrying out the day-to-day investment business functions of the applicant;
8. Written confirmation as to whether or not the applicant has delegated or intends to delegate any of its relevant business functions;
9. Written confirmation from the applicant's legal practitioner that the legal practitioner has agreed to act for the applicant; and
0. A written declaration by the applicant's authorised representative or legal practitioner that the application for approval as an investment manager is complete and meets the application requirements of the regulations.

Should you have any questions about the approved managers regime or, more generally, about investment management in the BVI, please get in touch with a member of the team.

To find out more about our services in this area, click here.

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