

BVI funds: 1996 and beyond

October 2018

The Mutual Funds Act, 1996 and the Partnership Act, 1996 were two statutes on which the investment funds business in the BVI was based. Despite the long history in the investment funds space, reaching back more than 20 years to 1996 and further, it is the recent legislative developments in the BVI that will ensure its future.

Many jurisdictions, including the BVI, have offerings that appeal to seasoned fund managers but few cater to the start-up manager or managers acting for family offices, friends and family. That is where the BVI is different. Among its stable of fund products, there are three that are gaining popularity and traction in this overlooked space. That is the Incubator Fund, the Approved Fund and the Approved Manager. There has been a steady increase in the number of these entities being established in the BVI since their introduction and there is no secret why. Generally, these products offer simplicity, speed to market, cost efficiency and the infrastructure support that cannot be found in other places. As a result, there has been increased interest in these structures particularly here in Asia. Coupled with this, is the recent enactment of the BVI Limited Partnership Act which provides for a modernised and innovative limited partnership structure that will prove a very desirable and attractive in the investment funds and private equity space.

A little more detail about each will quickly show why this is the case.

Incubator Fund

An incubator fund has a minimum investment requirement of US\$20,000, a cap on net assets of US\$20 million and limit of 20 investors. An incubator fund does not need to appoint an administrator, custodian, investment manager or auditor and hence can be set up and launched very quickly. However, an incubator fund has a limited life of 2 years which can be extended for up to 12 months.

Approved Fund

An approved fund has a net assets cap of US\$100 million and no more than 20 investors are permitted, but with no minimum investment criteria. An approved fund may operate without appointing a custodian, investment manager, or auditor, but will need an administrator.

Approved Manager

An Approved Manager's license in the BVI is a short form, streamlined license designed for cases where a full management license is unnecessary under the Securities and Investment Business Act, 2010. An Approved Manager can act as manager to any number of BVI regulated funds, as well as funds domiciled outside of the BVI in a recognised jurisdiction, such as Singapore, or Hong Kong among others, 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.

Limited Partnership Act (LPA)

WE ARE OFFSHORE LAW

BVI | Cayman | Guernsey | Jersey | London

The new LPA provides the option of registering a limited partnership (**LP**) with legal personality. If that option is chosen the new statute expressly provides that such a LP is not a body corporate but it does have legal personality with full capacity to carry on and undertake any business or activity, or do any act or enter into an transaction.

As with most LPs, a BVI limited partner is not liable for the debts and liabilities of the LP beyond the amount of the LPs contribution or unpaid commitment, unless they have taken part in the management of the LP. The LPA sets out an extensive list of activities that an LP can undertake without these items constituting "taking part in the management" of the LP.

An LP is required to have a general partner (**GP**) however the GP does not need to be a BVI company, and where it is a foreign company that company is not required to be registered in the BVI. A GP may, but is not required by the LPA to, make contribution to the capital of the LP. Should an LP not have a GP, the limited partners have up to ninety (90) days to admit a new GP.

The LPA provides the ability for an LP:

1. to create by an instrument in writing a charge of the assets of the LP;
2. to register the security interest against an LP on the Register of Registered Charges; and
3. to establish the priority of the security interests created by the LP.

The LPA also incorporates a number of corporate features such as the ability to redomicile, merge and consolidate, provides for schemes of arrangement and includes comprehensive provisions regulating the termination of an LP and both solvent and insolvent winding up.

The LPA brings to the BVI many of the modern features that investors have come to expect in limited partnership law. In addition, it has introduced a number of innovative features that will bring the BVI LP to the forefront. We expect that practitioners and users will gravitate to the BVI LP for its commercial and user friendly approach to limited partnerships in the same way that the BVI business company has become so popular.

Article first published in Asian Legal Business, October 2018.