

Regulatory regime for closed-ended funds in the BVI

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As part of BVI's continued commitment to remain at the forefront of international legislation and EU compliance, the BVI enacted the Securities and Investment Business (Amendment) Act, 2019 (the **Act**) and the accompanying Private Investment Funds Regulations, 2019 (the **PIF Regulations**). These came into force on 31 December 2019.

Who does this new regime apply to?

A fund will come within the new definition of a 'private investment fund' provided it:

- collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk, and
- issues fund interests, which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets

Application criteria

To classify as a private investment fund, the following criteria must be satisfied:

- it must be lawfully incorporated, registered, formed or organised under the laws of the BVI or under the laws of a country outside the BVI
- the constitutional documents must specify that:
 - the fund is not authorised to have more than 50 investors
 - an invitation to subscribe for, or purchase, fund interests issued by the fund shall be made on a private basis only, or
 - the fund interests of the fund shall be issued only to professional investors with an initial investment of each professional investor, other than exempted investors, of not less than US\$100,000
- it must meet the criteria specified in the PIF regulations

What this means in practice

In practice, this means that close-ended funds will need to seek recognition and obtain a licence from the BVI Financial Services Commission (the **FSC**) prior to operating as a private investment fund and comply with the following ongoing obligations:

- have at least two directors (at least one of whom shall be an individual)

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- have an 'appointed person' at all times responsible for undertaking:
 - the management of fund property
 - the valuation of fund property
 - the safekeeping of fund property
- have an authorised representative
- have its offering document or term sheet meet certain criteria set out in the PIF Regulations
- maintain a clear and comprehensive policy for the valuation of fund property (to be carried out by the 'appointed person')
- maintain financial records
- prepare and file audited financial statements with the FSC within six months of the financial year
- notify the FSC of specific matters set out in the PIF Regulations

Timeframe

Existing close-ended funds have until 1 July 2020 to comply with the new regulations.

What's next

We will be publishing a separate note on additional new regulatory amendments applicable to BVI funds shortly.

Contact us

Please get in touch with the BVI Collas Crill team should you have any questions or require any assistance.