

Lighter regulatory regime for BVI Investment Managers

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Introduction

A new lighter regime has been introduced in the British Virgin Islands' ("**BVI**") for the approval of eligible investment business managers, complementing the existing licensing regime under the Securities and Investment Business Act 2010 ("**SIBA**").

Introduced with the enactment of the Investment Business (Approved Manager) Regulations 2012 and the publication of the Approved Investment Manager's Guidelines, the regime is particularly attractive for private equity and venture capital fund structures wishing to set up investment management and advisory companies in the BVI. It offers lighter regulation, less onerous application process, lower costs and reduced time frame for approvals.

Benefits

In summary, the main benefits of the new regime are as follows:

- Lighter regulation (no capital adequacy, professional indemnity insurance and compliance officer requirements)
- Less onerous application process (simple application form and minimum supporting documentation)
- Lower costs (lower application and annual fees)
- Reduced time frame for approval (1 week)

Qualifying criteria

The following conditions must be met for an investment manager/advisor to qualify for an Approved Manager status under the new regime:

- To be a BVI company or limited partnership that intends to act as the investment manager or advisor to a private fund, professional fund or a closed-ended fund domiciled in the BVI or a foreign fund investing substantially all of its assets in a BVI-domiciled fund;
- Self-certify that they satisfy the Commission's "fit and proper" test;
- To be subject to the following caps: No more than US\$400 million aggregate assets under management for open ended funds, and no more than US\$1 billion aggregate capital commitments for closed ended funds;
- To submit a short application form and limited supporting documents to the Commission at least seven business days prior to the intended commencement date.

Functions of the Approved Manager

An approved investment manager may carry out any of the following investment business functions:

- (a) act as an investment manager or investment advisor to a private fund or professional fund;
- (b) act as an investment manager or investment advisor to a closed-ended fund incorporated, formed or organised in the BVI with the characteristics of a private fund or professional fund;
- (c) act as an investment manager or investment advisor to a person who is affiliated to a fund structure within (a) and (b) above;
- (d) act as an investment manager or investment adviser to a fund incorporated or formed in a recognised jurisdiction that has equivalent characteristics to a private fund or professional fund;
- (e) act as an investment manager or investment advisor to such other person as the FSC may approve on a case by case basis. Included amongst the types of "other persons" for these purposes which the FSC has to date approved, includes, significantly, managed accounts;
- (f) act as an investment manager or investment advisor to a person that is:
 - (i) incorporated, formed or organised outside the BVI in a non-recognised jurisdiction;
 - (ii) has equivalent characteristics to a private fund, professional fund or a closed-ended fund; and
 - (iii) invests all or substantially all of its assets in one or more fund structures falling within (a) or (b) above (in determining what constitutes "substantial" for these purposes, account shall be taken of whether the aggregate of the fund's investment in the funds falling within (a) and (b) above amount to more than fifty percent of its total assets).

For the purposes of the above, a list of recognised jurisdictions is contained within the Securities and Investment Business (Recognised Jurisdictions) Notice, 2010 and, for these purposes the following are recognized jurisdictions:

Argentina
 Australia
 Bahamas
 Bermuda
 Belgium
 Brazil
 Canada
 Cayman Islands
 Chile
 China
 Denmark

Finland
 France
 Germany
 Gibraltar
 Greece
 Guernsey
 Hong Kong
 Ireland
 Isle of Man
 Italy
 Japan
 Jersey
 Luxembourg
 Malta
 Mexico
 Netherlands
 Netherlands Antilles
 New Zealand
 Norway
 Panama
 Portugal
 Singapore
 Spain
 South Africa
 Sweden
 Switzerland
 United Kingdom
 United States of America

Application process

A simple application form must be completed and submitted to the FSC together with:

- the applicant's constitutional documents;
- a CV for each principal, director and senior manager;
- a declaration that principals, directors and senior managers are "fit and proper";
- a declaration by a BVI lawyer or licensed BVI authorized representative confirming the application is complete and meets the application requirements
- a copy of the management, partnership and/or advisory agreement;
- details of the funds that the applicant intends to act for at commencement of relevant business;
- the date on which the applicant intends to commence relevant business;
- name of the individual which will be carrying out the investment business of the applicant;
- details of any delegation arrangements of the applicant's relevant business functions;
- lawyer's appointment confirmation letter;

Other requirements and continuing obligations

An Approved Manager is required to:

- File annual returns and unaudited financial statements;
- Appoint an authorized representative;
- Have two directors (one of whom must be an individual);
- Notify the FSC of any changes in its details or circumstances within 14 days of such change occurring.

Conclusion

With this new enactment, the BVI regulatory authorities show their commitment to preserving BVI's attractiveness for the establishment of fund structures and to ensuring that appropriate regulation is in place for all market players, having in mind their size and complexity of business.

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.