

British Virgin Islands: New Regulated Investment Funds Introduced

The British Virgin Islands (“**BVI**”) is one of the leading offshore investment funds jurisdictions, attracting investment managers and investors worldwide. BVI investment fund structures are well known in the industry and very flexible allowing investment managers to tailor their offering to the needs of investors.

Background

Only open-ended investment funds are regulated in the BVI, i.e. investment funds which provide their investors with the option to redeem their shares or interests in the investment fund. In contrast, there are no specific regulations for closed-ended investment funds under BVI law. Therefore, private equity funds are usually established as unregulated funds.

The most popular types of regulated funds in the BVI are the professional fund (the “**Professional Fund**”) and the private fund (the “**Private Fund**”). The key requirement for an investment into a Professional Fund is that the investor must initially invest at least USD100,000. In contrast, a Private Fund has no minimum investment threshold but is limited to either having no more than 50 investors or to private marketing, i.e. it cannot be marketed publicly. A Professional Fund and a Private Fund must both have certain third party service providers appointed and, subject to limited exemptions, file audited financial statements annually.

What is new?

The BVI Government and the private sector have developed two new regulated fund structures to cater for family and friends structures and start up investment managers, both of which are less regulated than Professional Funds and Private Funds and offer simplified opportunities to pool investments on a more cost-efficient basis. The new fund structures can be constituted as either a company or a limited partnership.

The Approved Fund

The approved fund (the “**Approved Fund**”) is geared towards ‘family and friends’ funds. Its key characteristics are:

- the total number of investors is restricted to 20;
- net assets of the Approved Fund must not exceed USD100,000,000 (or its equivalent in any other currency);
- no requirement to have an offering document in place;

- no requirement to have third party service providers appointed, except for appointment of a fund administrator which will, in short, provide the Approved Fund with registrar and transfer agent and net asset value calculation services; and
- no requirement to file audited financial statements.

Although not required by law, in practice the Approved Fund will often have a third party investment manager appointed. The investment manager will typically hold all voting shares issued by the Approved Fund and provide the Approved Fund with discretionary investment advice.

The Incubator Fund

The incubator fund (the “**Incubator Fund**”) is geared towards start up investment managers who wish to offer investments into a regulated investment fund at reasonable costs to build up their track record. The key characteristics of an Incubator Fund are:

- the total number of investors is restricted to 20;
- an investor must initially invest at least USD20,000;
- the net assets of the Incubator Fund must not exceed USD20,000,000 (or its equivalent in any other currency);
- no requirement to have an offering document in place;
- no requirement to have third party service providers appointed;
- no requirement to file audited financial statements; and
- the life span is limited to 2 years (or 3 if an extension is granted) after which an Incubator Fund may be converted into a Professional Fund, a Private Fund or an Approved Fund. Alternatively, an Incubator Fund can also be converted into an unregulated fund.

Ongoing Requirements

Approved Funds and Incubator Funds must:

- have two directors, one of which must be an individual;
- have an authorised representative. The authorised representative will serve as a conduit between the fund and the BVI Financial Services Commission (the “**FSC**”);
- submit financial statements annually (which need not be audited);
- submit returns to the FSC regarding its status, i.e. the number of investors, total investments, aggregate subscriptions and redemptions, net asset value of the fund and details of any significant investor complaints; and
- notify the FSC within 14 days of any changes to the information provided in the application or in relation to any matter which is likely to have a material impact on the fund.

Taxation

No income, corporate, capital gains or withholding taxes are levied on an Approved Fund or Incubator Fund in the BVI.

When can I start?

An Approved Fund or Incubator Fund may start business two days after submitting a complete application to the FSC.

Costs

Your usual contact at Campbells will provide you with an estimate on the set up and on-going costs for an Approved Fund or Incubator Fund.

For further information on this topic, please contact one of our lawyers listed below:



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