

British Virgin Islands: The Approved Manager

The British Virgin Islands (the “**BVI**”) is one of the leading offshore funds jurisdictions, attracting investment managers and investors worldwide. The management of investment funds and client accounts in, or from within the BVI (whether by way of providing discretionary, or non-discretionary investment advice), requires prior regulatory approval from the BVI Financial Services Commission (the “**Commission**”).

Regulatory approval by the Commission may be obtained under either: (1) the Securities and Investment Business Act, 2010 (“**SIBA**”); or (2) the Investment Business (Approved Managers) Regulations, 2012 (the “**Approved Manager Regulations**”).

The Approved Manager Regulations were implemented in 2012 with a view to offering investment fund managers a significantly simplified approval process in obtaining a licence for the management of BVI funds, as opposed to applications made under SIBA. The Approved Manager Regulations have since been amended to also allow for the management of foreign funds (including Cayman Islands funds) as well. The Approved Manager Regulations provide the Commission with the discretion to grant a licence to an investment manager acting on behalf of such other person as the Commission may approve on a case-by-case basis. The Commission has used its discretion and granted licences under the Approved Manager Regulations to manage client accounts.

This advisory sets out the requirements to set up and operate an approved manager under the Approved Manager Regulations (the “**Approved Manager**”).

Vehicle

An Approved Manager may be set up as a BVI business company incorporated under the BVI Business Company Act, 2004 (as amended) or as a limited partnership registered under the Partnership Act, 1996 (as amended). Individuals cannot hold an Approved Manager licence.

Type of Management Services

The Approved Manager may act as an investment manager providing either discretionary or non-discretionary advice to certain BVI and foreign funds, notably:

- private funds [1] and professional funds [2];
- incubator funds [3] and approved funds [4];
- foreign funds registered under the laws of a recognised jurisdiction [5] with the characteristics of a private or

- a professional fund;
- closed-ended funds, whether registered under the laws of the BVI or the laws of a recognised jurisdiction with the characteristics of a private or professional fund; and
- certain foreign funds registered in a non-recognised jurisdiction.

The Approved Manager may also be licenced to provide its clients with customised managed account services. The conditions under which a licence for such services is granted will be subject to the Commission's discretion and it should be expected that the Commission will only grant such licences where managed account services are being provided to sophisticated investors.

Assets under Management

The Approved Manager may not manage aggregate assets worth over US\$400 million if managing an open-ended fund or US\$1 billion if managing a closed-ended fund. The assets of feeder funds will be disregarded for the purposes of calculating the aggregate value of the assets.

If the Approved Manager exceeds, or is likely to exceed, the relevant asset threshold, it must notify the Commission of that fact within seven days. The Approved Manager may then apply for a full Category 3 Investment Management licence (or, if providing non-discretionary services only, a Category 4 Advisory licence), under SIBA, which carries no restriction in relation to the value of assets under management.

Application

An applicant for an Approved Manager licence may commence management business seven days after the submission of a complete application to the Commission, unless the Commission agrees to a shorter period in writing.

A complete application will consist of, amongst other items:

- a copy of the investment management, advisory agreement and/or managed account agreement between the applicant and each fund (or person) that the applicant intends to act for upon commencement of "relevant business";
- a written confirmation as to which individuals will be carrying out the day-to-day investment business functions of the applicant;
- a written confirmation whether or not the applicant has delegated or intends to delegate any of its relevant business functions (together with details of any individuals within the delegate's organisation who will be carrying out the delegated function);
- a resume of each director and senior officer of the applicant, the individuals who will carry out the day-to-day investment business functions of the applicant and of any person to whom the applicant proposes to delegate any of its investment business functions;
- a written declaration by the applicant's authorised representative or legal practitioner that the application for approval as an Approved Manager is complete meets the application requirements of the Approved Manager

Regulations; and

- a written confirmation from the Applicant's legal practitioner that the legal practitioner has agreed to act for the applicant.

The application must also include the application fee of US\$1,000.

Ongoing Requirements

An Approved Manager is subject to the following ongoing requirements:

- to have two directors appointed at all times, one of whom must be an individual. There is no residence requirement for a director. If the Approved Manager is formed as a limited partnership, such partnership must, at all times, have at least one general partner;
- to have an authorised representative appointed at all times who is certified by the Commission. The authorised representative acts as an intermediary between the Approved Manager and the Commission;
- to notify the Commission within 14 days of any change to the information submitted with the initial application form;
- to notify the Commission of any matter which has, or is likely to have, a material impact or significant regulatory impact on the Approved Manager or its "relevant business";
- to submit financial statements, which need not be audited, to the Commission within six months after the end of the financial year; and
- to submit the annual return in the approved form and the annual renewal fee each by 31 January of each year.

Taxation

In the BVI, no income, corporate, capital gains or withholding taxes are levied on Approved Managers or funds more generally.

Costs

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

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

[1] The key feature of a private fund is that it is restricted to either having no more than 50 investors or that an invitation to subscribe for, or purchase, fund interests issued by the private fund shall be made on a private basis only. [2] The key feature of a professional fund is that each investor, other than an exempted investor, must make an initial investment of at least US\$100,000 (or its equivalent in any other currency) and must be either a person (i) whose ordinary business involves, whether for that person's own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund; or (ii) who has signed a declaration that, whether individually or jointly with his spouse, has net worth in excess of US\$1,000,000 (or its equivalent in any other currency) and consents to being treated as a professional investor. [3] Key features of the incubator fund are that (i) there is no requirement to appoint

service providers, (ii) an investor must initially at least invest US\$20,000, (iii) net assets must not exceed US\$20,000,000, (iv) no requirement to file audited financial statements and (v) the life span is limited to two years (or three if extension is granted) after which an incubator fund may be converted into a professional fund, private fund or approved fund. [4] Key features of an approved fund are that (i) there is no requirement to appoint service providers except for a fund administrator, (ii) total number of investors is restricted to 20, (iii) net assets must not exceed US\$100,000,000 and (iv) no requirement to file audited financial statements. [5] Recognised jurisdictions are: Argentina, Australia, Bahamas, Bermuda, Belgium, Brazil, Canada, Cayman Islands, Chile, China, Curaçao, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Ireland, Isle of Man, Italy, Japan, Jersey, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, Portugal, Singapore, Spain, South Africa, Sweden, Switzerland, United Kingdom and the United States of America.



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