

BVI Professional Fund – The most popular BVI investment funds product

This briefing paper is intended for general guidance only and is not, nor should it be used for, a substitute for specific legal advice on any particular transaction or set of circumstances.

Introduction

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 are very flexible, allowing investment managers to tailor their offering to the needs of investors.

The BVI "Mutual Funds" regime regulates open-ended investment funds, i.e. investment funds in which investors have the right to demand redemption of their shares. In contrast, closed-ended investment funds (in which investors cannot demand redemption) are regulated under the "Private Investment Funds" regime. As a result, private equity funds, and other funds with illiquid assets, are typically established as Private Investment Funds.

Historically, the most popular type of BVI Mutual Fund is the Professional Fund.

Overview

The professional fund is intended for professional investors and operates with reduced retail protections on the basis of investor eligibility and disclosure. A professional investor is defined under the Securities and Investment Business Act (as revised) ("SIBA") of the BVI as being 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 the person, whether individually or jointly with the person's spouse, has net worth in excess of US\$1,000,000 (or its equivalent in another currency) and that the person consents to being treated as a professional investor.

There is no restriction on the number of investors that a professional fund can have, though each investor other than an 'exempted investor' (such as the fund's manager, administrator, promoter or certain employees) must initially invest at least US\$100,000.

Ongoing Requirements

A professional fund must:

- have two directors, one of which must be an individual;
- have a fund administrator, a fund manager, and a custodian (though it is possible to apply for an exemption from the requirement to appoint a fund manager or a custodian);
- provide the FSC with at least 7 days' prior notification of the proposed appointment of any of the above service providers;

- have an authorised representative to serve as a conduit between the fund and the BVI Financial Services Commission (“FSC”), and Campbells can serve in this role for a modest fee;
- submit audited financial statements and annual returns annually to the FSC;
- 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 professional fund;
- adopt and maintain a clear and comprehensive valuation policy with procedures that are sufficient to ensure that valuations are effectively implemented. Such policy and procedures must be appropriate for the nature, size, complexity, structure and diversity of fund assets (including procedures for preparing investor reports on valuation);
- appoint person(s) responsible for valuation who is/are independent of the person(s) responsible for the investment function (or put appropriate safeguards in place to manage conflicts, and disclose this to investors);
- ensure that a prescribed form of investment warning, that complies with the Mutual Fund Regulations (as revised), is provided to, and acknowledged by, the investor prior to subscription;
- comply with BVI AML and KYC standards (requiring identification of investors and their ultimate beneficial owners and verification thereof); and
- register for FATCA/CRS and report annually. .

Core Governance and Appointments

A professional fund must at all times have a BVI registered agent, a registered office in the BVI and an authorised representative certified to act before the FSC. Functionaries must include, on an ongoing basis, a manager, a custodian and an administrator, unless the fund has obtained an exemption from the requirement to have a manager or custodian. There is no exemption from the requirement to have an administrator. Functionaries should be established and located in a recognised jurisdiction, although the FSC may accept a functionary outside those jurisdictions if the fund demonstrates effective regulation of investment business in the proposed jurisdiction.

Notification requirements

Below is a table summarising the timeframes for notifying the FSC of various matters which may commonly occur for a professional fund:

When to notify the FSC	Notification Period
Proposed appointment of a functionary (e.g. manager, administrator, custodian or any prime broker)	At least 7 days' prior notice
If a functionary ceases to act	Within 7 days with reason for the resignation
Change of a director, auditor or authorised representative	Within 14 days
Change in the address of the fund's place of business	Within 14 days
Any amendment to the constitutional documents	Within 14 days
Amendment of any offering document previously provided to the FSC or issuance of any offering document not previously provided to the FSC (e.g. an appendix for a sub-fund)	Within 14 days
Amendment to the valuation policy	Within 14 days

Fund Documentation and Investor Onboarding

A professional fund may only accept investors who have provided written confirmation that they are professional investors and a written acknowledgment that they have received, understood and accepted the BVI investment warning in the offering document before investing.

Anti-Money Laundering, Counter-Terrorist Financing and Proliferation Financing

A professional fund must maintain appropriate policies and procedures to prevent money laundering, terrorist financing, proliferation financing and to comply with applicable sanctions. A professional fund is required to appoint a Money Laundering Reporting Officer ("MLRO"), though it is exempt from the requirement to appoint a compliance officer. The MLRO need not be an employee or BVI-resident but must meet the competency requirements under BVI AML Regulations. The FSC must be notified within 14 days of MLRO appointments and cessations. In practice, many funds outsource investor identification and verification procedures to the administrator, which may also provide MLRO services.

Financial Reporting, Audit and Regulatory Returns

A professional fund must appoint an auditor and file audited financial statements annually with the FSC within six months of the professional fund's financial year end, unless an extension is granted by, or an exemption is obtained from, the FSC. A professional fund must also file the Mutual Fund Annual Return by 30 June each year.

Automatic Exchange of Information (CRS and FATCA)

A professional fund must register with the BVI International Tax Authority for online reporting through the BVI FARs portal and submit its Common Reporting Standard and US FATCA reports annually by 31 May.

A professional fund must implement and maintain written CRS policies and procedures and submit a CRS form by 30 September each year providing additional information required of BVI reporting financial institutions.

Fees and Filing Calendar

A professional fund must pay annual fees comprising the corporate registry fee and the FSC renewal fee. Registry fees are due annually (by 31 May or 30 November depending on incorporation date) and are upwards of US\$550 depending on the number of shares that the professional fund is authorised to issue. The FSC renewal fee is US\$1,200, due annually by 31 March.

Below is a table summarising the annual filing requirements:

Date	Filing Action
31 March	Payment of recognition fee to the FSC. Please note that non-payment may lead to penalties and/or enforcement actions by the FSC
30 April	Deadline for CRS initial enrolment
30 April	Funds which are structured as limited partnerships, need to pay the Registry fees
31 May	FATCA/CRS reporting deadline
31 May	Funds which are companies and incorporated from 1 January to 30 June, need to pay Registry fees
30 June	Submit audited financial statements to the FSC, if financial year-end is 31 December. Otherwise, submit by the date six months after the end of the fund's relevant financial year
30 June	Submit Mutual Fund Annual Return to the FSC
30 November	Funds which are companies and incorporated from 1 July to 31 December, need to pay Registry fees

Place of Business and Record-Keeping

A professional fund must maintain records sufficient to show and explain transactions, determine the financial position with reasonable accuracy at any time, prepare required financial statements and returns, and enable audit where applicable. Records must be retained for at least five years after completion of the relevant transaction.

Economic Substance and Beneficial Ownership

A professional fund must file an annual economic substance declaration with the International Tax Authority within six months of the end of its relevant financial period, typically through its registered agent once relevant information and fees are provided. Professional funds are exempt from filing their register of members with the Registrar of Corporate Affairs and from filing beneficial ownership information, provided such information can be provided within 24 hours upon request by the authorised representative or other permitted BVI-licensed person. The registered agent must make the relevant exemption filings on a professional fund's behalf.

Taxation

Consistent with the BVI's tax-neutral regime for investment funds, professional funds are generally not subject to BVI income, corporate, capital gains or withholding taxes. This facilitates efficient cross-border investment structures and investor returns without incremental BVI tax leakage, while leaving investor-level tax outcomes to their home jurisdictions.

When can I start?

A professional fund may carry on business for up to 21 days prior to obtaining FSC recognition provided the application for recognition is lodged with the FSC within 14 days of launch. During this period, any offering must still be limited strictly to professional investors and accompanied by the prescribed investment warning. This provides the professional fund with the advantage to enter the market very quickly.

Costs and Further Information

Your usual contact at Campbells will provide you with an estimate on the set up and ongoing costs for a professional fund.

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



Robert Searle
Partner
+852 9010 1232
rsearle@campbellslegal.com



Richard Spencer
Partner
+1 345 914 5835
rspencer@campbellslegal.com



Guy Williamson
Partner
+1 284 494 2423
gwilliamson@campbellslegal.com



James McKeon
Partner
+ 852 3708 3022
jmckeon@campbellslegal.com



Peter Alphart
Senior Associate
+852 3708 3011
palphart@campbellslegal.com