

Funds in the British Virgin Islands

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The British Virgin Islands (“BVI”) is a long-standing jurisdiction of choice for the incorporation of investment funds. This is due to the familiarity and stability of the BVI’s English common law based legal system, tax neutral treatment and the business-friendly flexibility of the BVI’s regulatory and judicial regime. Funds in the British Virgin Islands are regulated by the Financial Services Commission (the “FSC”).

Fund structuring

The majority of BVI funds are incorporated as companies under the BVI Business Companies Act (the “Act”), as amended. This provides for a very flexible structure as there is no concept of authorised capital or share capital under BVI law and, subject to the memorandum and articles of association of the BVI company, shares may be issued with no par value. The Act also provides for segregated portfolio companies with statutory segregation of assets and liabilities between segregated portfolios established within the company. Segregated portfolio companies are popular for multi-class or umbrella funds in which two or more segregated portfolios use different investment strategies.

Alternatively, funds may be incorporated as international limited partnerships, which do not have a separate legal personality distinct from that of the partners; making the general partner ultimately responsible for the debts and obligations of the partnership (a limited partner is not liable for the debts and obligations of a partnership beyond the amount of its contributed partnership interest). For a more detailed comparison of the company and international limited partnership structures please see our legal guide “Private Equity Fund Structuring in the BVI”.

Types of BVI funds

In addition to the recognition by the FSC of foreign incorporated funds, there are currently 5 types of fund which may operate in the BVI:

- private funds
- professional funds
- public funds
- incubator funds
- approved funds

We set out below a brief description of the key features of each type of fund, however for a more detailed comparison please see our legal guide “Comparison of BVI Funds”.

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Private funds

Private funds regulated in the BVI do not have a minimum initial investment amount for each investor or any restrictions relating to “professional” or “sophisticated” investors. In order to qualify as a private fund, the total number of investors must be limited to 50 or invitations to subscribe for fund interests issued by the fund must be made on a private basis only.

Professional funds

Professional funds are the most popular type of fund in the BVI. In order to qualify as a professional fund, fund interests must only be issued to professional investors or exempted investors. The minimum initial investment for a professional investor must be at least US\$100,000. There is no limit on the number of investors who may invest in a professional fund.

A professional investor is a person:

- whose ordinary business involves the acquisition or disposal of property of the same kind as the property of the fund; or
- who, whether individually or jointly with a spouse, has a net worth in excess of US\$1,000,000.

Exempted investors, on the other hand, do not have a required minimum initial investment. Exempted investors include:

- the manager, administrator, promoter or underwriter of the fund; or
- any employee of the manager of the fund.

Public funds

Public funds are generally viewed as a retail product and are therefore subject to a considerably higher regulatory burden than that applicable to other types of funds. However, a public fund is not subject to any restrictions as to the categories or numbers of investors who may invest in the fund.

Incubator and approved funds

Incubator and approved funds were introduced in 2015 by the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 and are designed to provide a fast and cost-effective method for managers to start open-ended funds, by allowing qualifying open-ended funds to be approved to conduct business within a lighter regulatory regime. It is possible to commence business as an approved or an incubator fund two business days following the receipt by the FSC of a completed application in respect of the fund.

Incubator funds are suitable for sophisticated private investors only. The total number of investors is limited to a maximum of 20 and the net assets of the fund must not exceed \$20,000,000 or its equivalent in any other currency. Incubator funds are not required to have an administrator but are limited to an approved period of two years (with the possible extension for an additional 12 months upon application to the FSC). At the end of this period an incubator fund must either terminate its business or apply to the FSC to be recognised as a private fund or professional fund or to be approved as an approved fund.

Approved funds are designed for smaller strategies and friends and families funds. The total number of investors is limited to 20 and the net assets of the fund must not exceed US\$100,000,000 or its equivalent in any other currency. An approved fund must have an administrator but is not required to have a manager or a custodian and no audit is required. The validity period for an approved fund is unlimited.

Where an incubator or an approved fund exceeds the permitted amount of investments or number of investors, the FSC may direct that the fund converts into a private fund or a professional fund (or, in the case of an incubator fund, into an approved fund) or that the fund is liquidated or ceases to carry on fund business.

Authorised representatives

All funds recognised or registered in the BVI (and all persons licenced to carry on regulated investment business in or from within the BVI) must appoint and at all times have an authorised representative who shall be a person or entity resident in the BVI and certified by the FSC, unless the fund has a significant management presence in the BVI. CO Authorised Representative Ltd. can provide this service if required. The functions of the authorised representative are to:

- act as the main intermediary between the fund and the FSC;
- accept service of notices and other documents on behalf of the fund; and
- keep such records or copies of such records as may be prescribed from time to time.

All documents to be submitted to the FSC by the fund must be submitted by its authorised representative and all fees to be paid by a fund must be paid by its authorised representative on behalf of the fund.

For further information and assistance in respect of fund structuring in the BVI or to set up a fund in the BVI, please contact the Carey Olsen BVI team.

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