

Comparison of British Virgin Islands funds

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Following the promulgation of the Securities and Investment Business (Incubator and Approved Funds) Regulations 2015 (the “Regulations”), the British Virgin Islands (the “BVI”) has established two additional types of funds, incubator funds and approved funds. Prior to the Regulations, the BVI offered three types of open-ended funds; private funds, professional funds and public funds.

In comparison to the previous funds, the two new funds are lightly regulated and are very cost efficient. The incubator fund is a start-up fund which offers managers a straightforward, economical solution for implementing an investment strategy with low up-front costs and limited on going obligations. The approved fund is aimed at the “friends and family” market and is similar to the private fund, but with less stringent regulation and lower on-going costs. The chart below provides a comparison of the five BVI funds, from formation to on-going obligations.

The following defined terms are set out in the comparison table:

- Exempted Investor means:
 - a. the manager, administrator, promoter or underwriter of the fund, or
 - b. any employee of the manager or promoter of a fund.
- FSC means the BVI Financial Services Commission.
- M&A means a company’s memorandum and articles of association.
- NAV means net asset value.
- Professional Investor means a person:
 - a. 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
 - b. who has signed a declaration that he or she, whether individually or jointly with his or her spouse, has a net worth in excess of US\$1,000,000 and that he or she consents to be treated as a professional investor.
- SIBA means the Security and Investment Business Act, 2010.
- Sophisticated Private Investor means a person who has been invited to invest in an incubator fund and the amount of his or her initial investment is not less than US\$20,000.

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Comparison of BVI Funds

| | Private | Professional | Public | Incubator | Approved |
|---|--|---|---|--|--|
| Fund details | | | | | |
| Max. number of investors | 50 or the invitation to subscribe/purchase an interest is made on a private basis only | None | None | 20 | 20 |
| Minimum Investment | None | US\$100,000 unless Exempted Investor | None | US\$20,000 | None |
| Maximum NAV | None | None | None | US\$20,000,000 | US\$100,000,000 |
| Lifetime | Unlimited | Unlimited | Unlimited | 2 years, possibility to extend for a further year | Unlimited |
| Investor protection | | | | | |
| Investor criteria | No public offers to be made | Professional Investors only | Open to the public | Sophisticated Private Investors only | No public offers to be made |
| Launch | | | | | |
| Launch timeframe | Cannot commence business until FSC licenses it to do so. Generally completed within five business days of the application date | Can commence business 21 days before receiving its license from FSC | Cannot commence business until FSC licenses it to do so. Generally completed within four to six weeks of the application date | Can commence business two days from the date of receipt of application by the FSC | Can commence business two days from the date of receipt of application by the FSC |
| Offering document requirements | Offering Memorandum | Offering Memorandum | Prospectus complying with the terms of the Public Funds Code | Summary of terms | Summary of terms |
| Other documents required for application | Application form, business plan and constitutional documents | Application form, business plan and constitutional documents | Application form, business plan, completed Form A for each director and constitutional documents | Application form, written description of investment strategy, written warning which will be provided to investors and constitutional documents | Application form, written description of investment strategy, written warning which will be provided to investors and constitutional documents |

Continued

| | Private | Professional | Public | Incubator | Approved |
|--|--|--|--|---|--|
| Required functionaries | No less than two directors (one of which must be an individual), fund manager, administrator, custodian, auditor and authorised representative | No less than two directors (one of which must be an individual), fund manager, administrator, custodian, auditor and authorised representative | No less than two directors (each of whom must be individuals), fund manager, administrator, custodian, auditor and authorised representative | No less than two directors (one of which must be an individual) and authorised representative | No less than two directors (one of which must be an individual), administrator and authorised representative |
| On-going requirements | | | | | |
| Periodic reporting requirements¹ | Audited financial statements no later than six months after the end of each financial year. Annual returns by 30 June | Audited financial statements no later than six months after the end of each financial year. Annual returns by 30 June | Audited financial statements including director's certificate and report to investors no later than six months after the end of each financial year. Annual returns by 30 June | Unaudited financial statements no later than six months after the end of each financial year. Semi-annual reports by 31 January and 31 July. Annual returns by 31 January | Unaudited financial statements no later than six months after the end of each financial year. Annual returns by 31 January |
| Costs | | | | | |
| Application fee | US\$700 | US\$700 | US\$1,000 - Additional prospectus fee: US\$250 | US\$1,500 | US\$1,500 |
| Annual renewal fee | US\$1,000 | US\$1,000 | US\$1,500 | US\$1,000 | US\$1,000 |

¹ We note that there are a number of additional reporting requirements following the occurrence of certain events in relation to each type of fund (such as changes to functionaries or offering documentation) which will require a notification to, or the prior approval of, the FSC. Such reporting requirements are beyond the scope of this comparison, however please contact the Carey Olsen BVI team if you require further information.



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