

Continuing obligations for British Virgin Islands private and professional funds

Service area / [Corporate](#)

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No mutual fund may carry on business or hold itself out as carrying on business in or from within the British Virgin Islands (the "BVI") unless the mutual fund is a public fund, professional fund, private fund or recognised foreign fund regulated under the Securities and Investment Business Act ("SIBA").

In addition to the continuing obligations and fees which generally apply to BVI companies or partnerships, private and professional funds are subject to a number of on-going administrative requirements in the BVI pursuant to SIBA, the Mutual Funds Regulations, 2010 (the "Regulations") and other associated legislation. Failure to comply with these obligations can result in fines being imposed against the fund and/or the fund's recognition being revoked by the BVI Financial Services Commission (the "FSC").

This guide summarises the annual filings and the continuing obligations applicable to professional funds and private funds in the BVI. Please refer to our client guide "Continuing Obligations for BVI Public Funds" in relation to the continuing obligations applicable to public funds.

Annual filing requirements

- **Annual Mutual Fund Fee** – a fund must pay its annual mutual fund fee to the FSC by 31 March in each year.

- **Mutual funds annual return** – pursuant to the Financial Services (Prudential and Statistical Returns) Order, 2009, a fund must file its statistical return with the FSC by 30 June in each year ("Return"). The Return may be completed by any director, officer or other authorised representative of the reporting fund. All non-US dollar amounts must be converted to their US dollar equivalent using the rate of exchange prevailing as at the date ending the reporting period.
- **Financial statements** – a fund must provide a copy of its annual financial statements to the FSC within six months after the end of its financial year or such extended period, not exceeding 15 months, as the FSC may approve in writing. The financial statements of a fund must comply with:
 - a. the International Financial Reporting Standards promulgated by the International Accounting Standards Board;
 - b. UK GAAP;
 - c. US GAAP;
 - d. Canadian GAAP; or
 - e. another internationally recognised and generally accepted accounting standard equivalent to the standards set out in limbs a, b and c.

Continuing obligations

- **Directors and functionaries** – a private fund or a professional fund must at all times have:
 - a. at least two directors, at least one of whom must be an individual (where a fund breaches this requirement it must immediately notify the FSC in writing);
 - b. a fund manager;
 - c. a fund administrator; and
 - d. a custodian (who must be functionally independent from the fund manager and the fund administrator).
- The FSC may, on written application made by or on behalf of a fund, exempt the fund from the requirement to appoint a custodian or a fund manager. No person may be appointed as a functionary of a fund unless seven days' prior notification of the proposed appointment has been given to the FSC. Notice must also be given to the FSC within seven days of a functionary resigning, having its appointment terminated or otherwise ceasing to act as a functionary of the fund. This notice must include a statement of the reason for the person ceasing to act as a functionary of the fund.
- **Authorised representative** – a fund 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 determined in accordance with the Regulatory Code, 2009 (the "Regulatory Code"). Carey Olsen via CO Authorised Representative Ltd. can provide this service if required. The functions of the authorised representative are to:
 - a. act as the main intermediary between the fund and the FSC;
 - b. accept service of notices and other documents on behalf of the fund; and
 - c. keep such records or copies of such records as may be prescribed from time to time.
- Failure to comply with this requirement carries a fine of US\$15,000 on summary conviction.
- 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.
- **Auditor** – a fund must appoint and at all times have an auditor for the purpose of auditing its financial statements (the FSC may, on written application made by or on behalf of a fund, exempt the fund from the requirement to appoint an auditor).
- **Notification to the FSC** – a fund must provide written notice to the FSC:
 - a. within 14 days following the occurrence of:
 1. the appointment of a director, authorised representative or auditor;
 2. a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
 3. any change in the address of the fund's place of business, whether in or outside the BVI;
 4. any amendment to its constitutional documents;
 5. the issuance of an offering document that was not provided to the FSC with the fund's application for recognition; and
 6. the amendment of any offering document previously provided to the FSC; and
 - b. as soon as reasonably practicable, of any material change in the nature or scope of the fund's business in the case of a fund incorporated or organised under the laws of a country outside the BVI.
- **Maintenance of records** – as is the case for all BVI incorporated companies and partnerships, a fund must keep records for at least five years (even after the cancellation or revocation of its recognition as a fund) which:
 - a. are sufficient to show and explain its transactions;
 - b. allow its financial position to be determined with reasonable accuracy at any time;
 - c. enable it to prepare such financial statements and make such returns as it is required to make under SIBA and the Regulations; and
 - d. to enable its financial records to be audited in accordance with SIBA. Failure to comply with this requirement carries a fine of US\$20,000 on summary conviction.

For further information and assistance regarding private and professional funds in the BVI please contact the Carey Olsen BVI team.

Continued



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