

# Guide to the Approved Manager Regime in the British Virgin Islands

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

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For persons wishing to act as an investment manager or investment advisor in the BVI, regulatory approval from the FSC may be obtained under: (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 a significantly simplified approval process and a lighter regulatory framework than that provided under SIBA.

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

## Vehicle

An Approved Manager may be set up as a BVI business company incorporated under the BVI Business Company Act (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, professional, incubator or approved funds registered in the BVI or in a recognised jurisdiction under SIBA 1;
- closed-ended funds, registered under the laws of the BVI with the characteristics of a private or professional fund 2 (a “BVI CE Fund”);
- persons affiliated with a private, professional, incubator or approved fund or a BVI CE Fund;
- any fund domiciled in a recognised jurisdiction with the characteristics of a private or a professional fund;
- foreign funds registered in a non-recognised jurisdiction with the characteristics of a private, professional or closed-

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ended fund which invest all or a substantial part of their assets in either a private fund, a professional fund or a BVI CE Fund; and

- such other person(s) as the FSC may approve on a case-by-case basis.

## Assets under management

An Approved Manager may not manage aggregate assets worth over US\$400 million if managing an open-ended fund and US\$1 billion if managing a closed-ended fund.

If the Approved Manager exceeds, or is likely to exceed, the relevant asset threshold, it must notify the FSC of that fact within seven days. Within three months of the breach, the Approved Manager must reduce the assets under management to below the statutory threshold or 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 FSC, unless the FSC agrees to a shorter period in writing. The applicant may then carry on “relevant business” for a period of 30 days (or such extended period as the FSC may approve) until the application is approved.

A complete application will consist of:

- a copy of the applicant’s constitutional documents;
- the details of each director or general partner and senior officer of, and of each person who owns or holds an interest in, the applicant;
- a written declaration by the applicant that each director or general partner and senior officer of, and each person who owns or holds a significant interest in the applicant is fit and proper in accordance with Schedule 1A of the Regulatory Code, 2009 (a significant interest means, in short, the holding of 10% or more of the interest in the applicant);
- the number and details of the funds that the applicant intends to act for upon commencement of “relevant business”;
- a copy of the investment management or advisory 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 as to 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 or CV 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 and 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.

## Continuing obligations

An Approved Manager is subject to a number of requirements, including:

- 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 FSC. The authorised representative acts as an intermediary between the Approved Manager and the FSC;
- to notify the FSC within 14 days of any change to the information submitted with the initial application form;
- to notify the FSC 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 in accordance with SIBA, which need not be audited, to the FSC 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.

For further information regarding the continuing obligations applicable to Approved Managers in the BVI please refer to our client guide “Continuing Obligations for BVI Regulated Entities”.

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