

New regulatory regime for closed ended funds in the British Virgin Islands

Service area / [Investment Funds](#)

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Funds of an open-ended nature carrying on business in or from within the British Virgin Islands (“BVI”) have long been regulated under the Securities and Investments Business Act (“SIBA”). Whilst the existing funds legislation has continued to evolve over the years (most recently to introduce two additional fund products, namely the approved and incubator funds, each boasting a lighter regulatory regime), closed ended funds have remained on the periphery, until now.

In order to further improve the BVI funds regime and comply with the requirements of the Council of the European Union’s Code of Conduct for Business Taxation, the Securities and Investment Business (Amendment) Act, 2019 (the “Amendment”) was brought into force on 31 December 2019.

The new regime

The Amendment inserts a new Part IIIA (Private Investment Funds) into SIBA, which introduces a new supervisory regime for private investments funds. The Amendment and the corresponding Private Investment Funds Regulations, 2019 (the “Regulations”) require all closed ended funds that fall within the definition of a private investment fund to apply for recognition as a private investment fund to the BVI Financial Services Commission (the “FSC”). Failure to do so may result in significant fines being levied.

Is your closed ended fund a private investment fund?

A private investment fund is defined in the Amendment as a company, partnership, unit trust or any other body that is incorporated, registered, formed or organised under the laws of the BVI or the laws of any other country (each a “Fund”), which:

- collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; and
- issues fund interests, which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the relevant corporate entity.

Next steps if you are a private investment fund

For each Fund which falls within the definition of a private investment fund, an application for recognition, in the approved form, should be made to the FSC. Key documents that must accompany the application include:

- the Fund’s constitutional documents;
- the Fund’s certificate of incorporation or equivalent document;
- the offering document or term sheet if either has been issued (or will be issued) by the Fund; and
- the Fund’s valuation policy.

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In order for the FSC to recognise a Fund as a private investment fund, a Fund must satisfy the FSC that:

- it is lawfully incorporated, registered, formed or organised under the laws of the BVI or under the laws of a country outside the BVI;
- the constitutional documents of the Fund specify that:
 - the Fund is not authorised to have more than 50 investors;
 - an invitation to subscribe for, or purchase, fund interests issued by the Fund shall be made on a private basis only; or
 - the fund interests of the Fund shall be issued only to professional investors with an initial investment for each professional investor of not less than \$100,000;
- the Fund satisfies such other criteria as may be specified in the Regulations for recognition as a private investment fund;
- the Fund will, on being recognised, be in compliance with the Amendment, the Regulations and any practice directions applicable to the Fund; and
- recognising the Fund as a private investment fund is not against public interest.

If the FSC is satisfied that the above criteria will be met, then it will register the Fund in the Register of Private Investment Funds (the “Register”) and issue the fund with a certificate of recognition upon payment of the prescribed fee.

Continuing requirements for private investment funds

The key ongoing requirements with which a Fund recognised as a private investment fund must comply with under the Amendment and the Regulations include:

- (if the Fund is incorporated as a company) ensuring the Fund has at least two directors appointed at all times, one of whom must be an individual;
- appointing appointed persons (the “Appointed Persons”) who are responsible for the management, valuation and safekeeping (including segregation) of the fund property (the “AP Role”);
- appointing an authorised representative in the BVI (to act as a liaison between the Fund and the FSC);
- ensuring any offering document or term sheet to be issued to investors contains the information set out in Regulation 8 of the Regulations;
- where the Fund does not propose to issue an offering document or term sheet, providing the FSC with the reason why this is not being done and confirming how the relevant information is being provided to investors and potential investors;
- preparing and submitting to the FSC (within six months after the financial year end to which the financial statements relate) audited financial statements, prepared in

compliance with the International Financial Reporting Standards, UK GAAP, US GAAP, Canadian GAAP or such other equivalent internationally recognised and generally accepted accounting standards;

- auditing the financial statements in accordance with US GAAP, International Standards on Auditing (UK), International Standards on Auditing, Hong Kong Standards on Auditing, Canadian Standards on Auditing or such other recognised international auditing standards as may be approved by the FSC on a case by case basis;
- maintaining records that are sufficient to explain its financial position and transactions (such records to be maintained for at least five years from the date of the relevant transaction); and
- providing notice of the appointment/removal of a director, authorised representative or auditor within 14 days of the occurrence of the relevant appointment/removal.

Appointed person

The Appointed Persons may be:

- persons licensed by the FSC or a regulatory authority in a recognised jurisdiction to perform the AP Role;
- independent third parties with experience in performing an AP Role; or
- a director, partner or trustee of the Fund.

At least seven days’ notice must be given to the FSC before the appointment of the Appointed Person (unless the FSC otherwise agrees to a shorter period). If the Appointed Person resigns, has their appointment terminated or otherwise ceases to act as an appointed person to the Fund, the Fund must notify the FSC within seven days of such an event occurring.

Register of private investment funds

The Register maintained by the FSC will be available for public inspection and will include the following information:

- the address of the place of business and address for service in the BVI of the person who applied for recognition (the “Applicant”);
- the Applicant’s authorised representative;
- the address of the place of business that the Applicant may have outside the BVI;
- the date of recognition of the Fund;
- the status of recognition, if cancelled, and the date of cancellation;
- whether fees due by the Fund to the FSC have been paid and date of payment; and
- such other information as the FSC considers to be appropriate.

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Consequences of non-compliance

A Fund which is not recognised by the FSC under the Amendment is not permitted to carry on the business of a private investment fund in or from within the BVI (which captures any Fund incorporated in the BVI). Significant fines may be levied by the FSC if the provisions of the Amendment are breached.

Existing funds

Existing Funds have until 1 July 2020 to ensure they comply with the Amendment and the Regulations. In order to ensure your Fund is compliant, please feel free to contact one of the [Carey Olsen BVI team](#) for further details and assistance.

Key contacts

For further information or professional advice please contact our lawyers below:



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