

British Virgin Islands Investment Funds

BACKGROUND

The BVI is an ideal jurisdiction for investment funds. The governing legislation is the Securities and Investment Business Act, 2010 (SIBA), the Mutual Funds Regulations, 2010, and related legislation.

FUND VEHICLES

BVI Funds can be formed as BVI business companies under the Business Companies Act (BCA), including Segregated Portfolio Companies (SPCs), BVI Limited Partnerships, or BVI Unit Trusts. These, in turn, are registered as Open Ended funds of one kind or another, or recognized as Closed Ended funds.

The advantage of SPCs licensed or recognized as funds is that the assets and liabilities of each portfolio are legally segregated from the assets and liabilities of the other portfolios within the SPC.

FUND FUNCTIONARIES

BVI Funds, subject to exemptions granted by the FSC, depending on the type of fund, should have qualified Directors, an Authorized Representative, a Fund Administrator, an Investment Manager, Custodian, and an Auditor. The Fund Administrator, which conducts the valuations of the fund, must be independent from the Investment Manager.

OPEN ENDED FUNDS

Open-Ended investment funds are defined as collective investment vehicles in which investors have the right to redeem on demand a proportionate interest in the value of the Fund at a specified valuation period. They are required to be licensed or recognized under SIBA. There are 5 types of Open Ended Funds.

1. Public Funds

Public Funds are not subject to any BVI restrictions on the categories or number of investors that may invest in the fund. Public Funds are generally utilized for retail offerings and are subject to more stringent regulation and scrutiny.

Public Funds must have audited financial statements, which must be filed with the FSC, a Fund Administrator, an Investment Manager, a Custodian, and an Auditor.

2. Professional Funds

Professional Funds are the most popular BVI investment fund product. They are aimed at high net worth and professional investors, minimum initial investments by each investor (other than an 'exempted investor') are US\$100,000. The constitutional documents of the fund must specify that the fund interests may only be issued to Professional Investors, defined as persons: (a) whose ordinary business involves the acquisition or disposal of property of the same kind as the property of the fund; or (b) who have signed a declaration that they have a net worth in excess of US\$1MM and consent to being treated as a Professional Investors.

Professional Funds must have audited financial statements, which must be filed with the FSC, a Fund Administrator, an Investment Manager, a Custodian, and an Auditor.

3. Private Funds

Private Funds are funds whose constitutional documents specify that: (a) the fund is not authorized to have more than 50 investors; or, (b) any invitation to investors to subscribe is to be made on a private basis. In turn, “private basis” is defined as including an invitation which is made to certain specified persons or by reason of a private or business connection between the person making the invitation and the investor.

Private Funds must have audited financial statements, a Fund Administrator, an Investment Manager, a Custodian, and an Auditor.

4. Approved Funds

Approved Funds are aimed at small, private offerings or friends and family funds. The key features of an Approved Fund are: (a) a maximum of 20 investors; and, (b) net assets not exceeding US\$100MM, or its equivalent.

Approved Funds must have a third-party administrator but are not required to have an Investment Manager, Custodian or Auditor, but must submit unaudited financials to the FSC. Approved Funds may just have a term sheet rather than an offering document, which must include certain risk warnings.

5. Incubator Funds

Incubator Funds are designed for start-ups. They must have a maximum of 20 “sophisticated private investors,” defined as persons who have been invited to invest in an incubator fund; the minimum investment for each investor is US\$20,000; and, the net assets of the fund must not exceed US\$20MM. An Incubator Fund is authorized to operate for up to two years, which may be extended to three years. The Incubator Fund may convert to a Private Fund, Professional Fund or an Approved Fund.

An Incubator Fund is not required to have a Fund Administrator, an Investment Manager, Custodian or Auditor, but must submit unaudited financials to the FSC. An Incubator Fund may just have a term sheet rather than an offering document, which must include certain risk warnings.

CLOSED ENDED FUNDS

Closed-Ended Investment Funds, which are collective investment vehicles in which investors do not have an automatic right to a periodic redemption, fall outside of SIBA with the exception that “Private Investment Funds” (“PIFs”), which may apply for recognition.

The PIF regime allows closed-ended BVI funds to apply for recognition by the FSC. A PIF is an entity which (a) collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk, and (b) issues fund interests, which entitle the holder to receive an amount computed by reference to the value of a proportionate interest of the fund assets.

The constitutional documents and offering documents must specify that: the fund is not authorized to have more than 50 investors; an invitation to subscribe for fund interests is on a private basis only; or the fund interests are issued only to professional investors with a minimum initial investment of \$100,000. The offering documents/term sheets must state the investment objective of the fund and a written statement that investors do not have the right to redeem or withdraw fund interests on demand. PIFs must appoint an Authorized Representative, a minimum of 2 qualified directors, 3 Appointed Persons responsible for the management, valuation, and safe-keeping of the fund property, respectively. PIFs must produce and file audited financial statements on a yearly basis.

VALUATION POLICY

All funds must maintain a clear and comprehensive policy for the valuation of fund property appropriate for the nature, size, complexity, structure and diversity of the fund, which must be set-out in the offering

document. The fund property must be valued by the fund's Administrator in accordance with the valuation policy, at least annually.

SAFEKEEPING OF ASSETS

All funds must have arrangements in place for the safekeeping, and appropriate segregation, of fund property. Whilst this is usually fulfilled by the appointment of a custodian or prime broker, for incubator and approved funds (which do not need to have either) this is typically fulfilled by a qualified person.

REPORTING REQUIREMENTS

SIBA License and Recognition fees are due to the FSC by March 31 each year. All Mutual Funds must file a Mutual Fund Annual Return via the MFAR platform. BVI Funds may have reporting obligations under FATCA and CRS.

OTHER REQUIREMENTS

All SIBA entities must comply with the AMLTF Code and Regulations, including the requirement to appoint a money laundering reporting officer (MLRO). SIBA regulated entities are required to comply with the BVI Data Protection Act (DPA). BVI Business Companies and LP's are required to file a return under the Economic Substance Act (ESA) with the ITA.