

What you need to know about BVI single investment funds and co-investment vehicles

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BVI entities are frequently the chosen vehicle for investment managers looking to offer investors deal specific private equity or venture capital investment opportunities outside of their formal private equity/venture capital fund structures, whether as a deal specific SPV (a **single investment fund**) or as a co-investment vehicle to invest alongside their main fund.

This note summarises some of the high level considerations for investment managers considering utilising BVI entities for such purposes.

| What is the regulatory treatment?

The regulation of collective investment schemes in the BVI is dealt with within Parts III and IIIA of the Securities and Investment Business Act, 2010, as amended (**SIBA**). For investment schemes operating private equity/venture capital investment strategies, which during the term of the investment tend not to give investors liquidity rights to exit their investment early, the regulatory analysis for whether that scheme needs to be regulated in the BVI will usually turn upon whether its characteristics are such that it falls within the statutory definition of a "private investment fund" for the purposes of section 63A of SIBA.

For these purposes, under section 63A of SIBA an entity will be a "private investment fund" if it:

- collects and pools investors funds for the purpose of collective investment and diversification of portfolio risk
- issues fund interests which entitle the holder to receive an amount computed by reference to the value of a proportional interest in the whole or in a part of the net assets

This statutory definition therefore requires the collecting and pooling of investor funds for the purposes of both (i) collective investment and (ii) diversification of portfolio risk and the

issuance of fund interests entitling investors to receive an amount computed by reference to the economic performance of the underlying investments.

Typically, single investment funds and co-investment vehicles established for deal specific private equity or venture capital investment purposes fall outside the definition of a "private investment fund" on the basis of the absence of "diversification of portfolio risk" (since to only make a single investment will, by definition, not represent a diversification of portfolio risk amongst the purposes of the entity).

What is the form of offering terms?

Given that single investment funds and co-investment vehicles will usually therefore be unregulated entities, there are no BVI regulatory requirements around the form of offering terms. This has the advantage of enabling such entities to be formed fairly quickly (and inexpensively) when compared to more formal fund structures. Typically, we see such structures offering their shares (if structured as a company) or interests (if structured as a limited partnership) through a form of term sheet or short form offering memorandum accompanied by a subscription agreement or, in club deals, through an investment agreement entered into between each of the investors participating in the deal.

What are the audit requirements?

As an unregulated entity, a single investment fund/co-investment vehicle is not obligated to appoint an auditor or prepare audited financial statements. We would expect to see investors being provided with periodic financial reporting on the underlying investment and perhaps also annual unaudited financial statements for the single investment fund/co-investment vehicle into which they have invested.

As with all other unregulated BVI entities, the single investment fund/co-investment vehicle will be required to file an annual return each year with its registered agent, which return provides fairly basic financial information in relation to its current financial position.

FATCA/CRS?

Single investment funds and co-investment vehicles, whilst being unregulated through virtue of falling outside the definition of a "private investment fund", will almost certainly be a considered to be a "Virgin Islands Financial Institution" on account of being an "investment entity" for the purposes of FATCA/CRS and so will be required to register on the BVI Financial Account Reporting System (**BVIFARS**) and report annually in relation to its "reportable accounts" (**AEOI Reporting**). For this reason, we frequently see single investment funds/co-investment vehicles opting to appoint a fund administrator to assist it with investor

subscriptions and its ongoing AEOL Reporting obligations.

Economic substance?

While single investment funds and co-investment vehicles will typically fall outside the statutory definition of a "private investment fund" under SIBA, they will nevertheless likely be considered to be an "investment fund" for the purposes of the Economic Substance (Companies and Limited Partnerships) Act, 2018, as amended (the **Economic Substance Act**), because the definition of an "investment fund" under the Economic Substance Act is broader than the statutory definition of a "private investment fund" under SIBA. The implication of this being that a single investment fund or co-investment vehicle will be considered to be undertaking "investment funds business" for the purposes of the Economic Substance Act (which, significantly, is expressly stated as not being a "relevant activity" for the purposes of the Economic Substance Act and therefore, as a consequence, enabling the entity to not be required to demonstrate substance in the BVI for the purposes of complying with the Economic Substance Act).

What this means in practice is that the obligations of a single investment fund or co-investment vehicle under the Economic Substance Act are limited to making an annual filing each year confirming that it does not undertake any relevant activity for the purposes of the Economic Substance Act (on the basis of the business activities it does undertake, being "investment funds business", being expressly stated as not being a "relevant activity" under the Economic Substance Act).

BVI investment managers of single investment funds and co-investment vehicles?

Where the principals of the investment manager decide to establish a separate investment manager entity in the BVI to provide investment management or investment advisory services to the single investment fund/co-investment vehicle and thereby earn management/advisory fees and/or carried interest in respect to the services provided by it to the single investment fund/co-investment vehicle, then as such investment management/investment advisory entity will be conducting "investment business" for the purposes of SIBA, it will separately require licensing for those activities notwithstanding that the entity it is providing investment management/investment advisory services to is not itself required to be regulated in the BVI. We typically see a BVI "Approved Manager" used as the investment manager entity in these circumstances.

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