

# BVI Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015

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## Introduction

Start-up and small/mid-sized investment managers have long utilised the British Virgin Islands' (BVI) for their fund structures and of particular appeal to such investment managers are the BVI's Incubator Fund and the Approved Fund categories, which are provided for by the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 (the Regulations).

## Key Features

The key features of these two categories of funds are as follows:

### Incubator Fund

- available for offerings to "sophisticated private investors" only (for these purposes, to be a "sophisticated private investor" a person must be invited to invest and the amount of his or her minimum initial investment shall not be less than US\$20,000);
- maximum of 20 investors;
- aggregate maximum investments in the Fund not exceeding US\$20 million (or its equivalent in another currency);
- "Incubator Fund" approval status limited to two years (with a possible further 12 month extension available at the discretion of the British Virgin Islands Financial Services Commission (the FSC), provided such application for an extension is filed at least one month prior to the expiration of the two year period) (such period being defined in the Regulations as the period of validity), following which the incubator fund must either (i) convert into a private fund; professional fund; or approved fund or (ii) cease operating as a fund;

- simplified licensing process;
- fast track time to market in that an incubator fund may commence business two business days following receipt by the FSC of the licence application;
- offering document/prospectus not mandatory and if no offering document is prepared, the regulatory requirement is that investors must each be given a written investment warning;
- on-going regulatory obligations limited to notification of changes within 14 days;
- audit of financial statements not mandatory; and
- no mandatory service providers.

#### Approved Fund

- maximum of 20 investors;
- aggregate maximum investments not exceeding US\$100 million (or its equivalent in another currency);
- simplified licensing process;
- fast track time to market in that an approved fund may commence business two business days following receipt by the FSC of the licence application;
- offering document/prospectus not mandatory and if no offering document is prepared, the regulatory requirement is that investors must each be given a written investment warning;
- on-going regulatory obligations limited to notification of changes within 14 days;
- audit of financial statements not mandatory; and
- other than a requirement to have a fund administrator, no other mandatory service providers.

#### On-going obligations

Once licensed, the on-going regulatory obligations of an incubator fund and an approved fund are as follows:

##### Incubator Fund

- notify the FSC within 14 days of any changes of any information provided in the licence application;
- notify the FSC of any matter likely to have a material impact with respect to the fund;
- have at all times an authorised representative (where a fund ceases to have an authorised

representative, the fund shall immediately notify the FSC of such fact in writing and appoint a replacement authorised representative within 21 days);

- have at all times at least two directors, one of whom must be an individual (where a fund ceases to have at least two directors, the fund shall immediately notify the FSC of such fact in writing and appoint a second director within 21 days);
- prepare and submit unaudited financial statements;
- submit to the FSC semi-annual returns by 31 July and 31 January, detailing, as at 30 June and 31 December respectively the number of investors in the fund; total investments of the fund; aggregate subscriptions to the fund; aggregate redemptions paid to investors; net asset value of the fund; and details of any significant investor complaints. The 31 January return should also state that the fund is not in breach of the requirements of the Regulations;
- payment of annual renewal fee (please note that for late payments, a penalty of US\$50 per day is incurred for each day that the renewal fees remains unpaid);
- where an incubator fund exceeds either the thresholds for aggregate investments or total number of investors for a period exceeding two consecutive months, it shall either within seven days:
  - notify the FSC of that fact in writing and submit an application to convert and become recognised as either a private fund; a professional fund; or an approved fund; or
  - commence the process for a voluntary liquidation under the BVI Business Companies Act, 2004 or restructure and amend its constitutional documents so as to cease to be a fund under section 40(1) of the Securities and Investment Business Act, 2004 and remove all references from its constitutional documents to being an incubator fund.

## Approved Fund

- notify the FSC within 14 days of any changes of any information provided in the licence application;
- notify the FSC of any matter likely to have a material impact with respect to the fund;
- have at all times an authorised representative (where a fund ceases to have an authorised representative, the fund shall immediately notify the FSC of such fact in writing and appoint a replacement authorised representative within 21 days);
- have at all times at least two directors, one of whom must be an individual (where a fund ceases to have at least two directors, the fund shall immediately notify the FSC of such fact in writing and appoint a second director within 21 days);
- prepare and submit unaudited financial statements;

- have at all times an administrator and any change in administrator must be immediately notified to the FSC;
- submit to the FSC an annual return by 31 January, stating that the fund is not in breach of the requirements of the Regulations; outlining any significant investor complaints, detailing as at 31 December the number of investors in the fund; total investments of the fund; aggregate subscriptions to the fund; aggregate redemptions paid to investors; and the net asset value of the fund;
- payment of annual renewal fee (please note that for late payments, a penalty of US\$50 per day is incurred for each day that the renewal fees remains unpaid);
- where an approved fund exceeds either the thresholds for aggregate investments or total number of investors for a period exceeding two consecutive months, it shall either within seven days:
  - notify the FSC of that fact in writing and submit an application to convert and become recognised as either a private fund; or a professional fund; or
  - commence the process for a voluntary liquidation under the BVI Business Companies Act, 2004 or restructure and amend its constitutional documents so as to cease to be a fund under section 40(1) of the Securities and Investment Business Act, 2004 and remove all references from its constitutional documents to being an approved fund.

### **Conversion of an Incubator Fund**

For those incubator funds which have following their “period of validity” intend to continue, the Regulations require them to convert into a more permanent fund structure. Such an application for conversion must be made with the FSC at least two months prior to the expiration of its “period of validity” and will involve the incubator fund submitting an application to convert into either (i) a private fund; (ii) a professional fund; or (iii) an approved fund.

Where an incubator fund converts into a private fund or professional fund (and so subjects itself to the mainstream regulatory regime for funds available under the Securities and Investment Business Act, 2010), the application for conversion is required to be submitted with an audit of its current financial position (such audit being an independent determination of the status of the fund's finances as opposed to an audit of its financial statements) and an audit of its compliance with the requirements of the Regulations.

### **Conversion of an Approved Fund**

Having exceeded either of the thresholds in relation to number of investors or maximum investments for two consecutive months an approved fund must convert to either a private fund; or a professional fund, by updating its fund documents and filing an application for

recognition.

Unlike the position for an incubator fund, in filing a conversion application for an approved fund, there is no equivalent statutory requirement for an audit of its current financial position and compliance with the Regulations to accompany the application.

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