

## BVI Segregated Portfolio Companies – use in closed ended fund structures

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The British Virgin Islands (**BVI**) will shortly implement some important changes to the rules governing segregated portfolio companies (**SPCs**) incorporated or registered under the BVI Business Companies Act, 2004 (**BCA**). These changes, introduced by the BVI Business Companies (Amendment) Act, 2018 (the **2018 BCA Amendment Act**) will come into force on 1 October 2018.

Whilst the use of SPCs in investment structures is not new, the BVI has historically restricted the use of SPC structures to regulated funds and insurance companies. The changes brought about by the 2018 BCA Amendment Act are intended to broaden the use of SPC structures going forward.

An SPC structure enables a BVI company to legally segregate assets and liabilities between individual segregated portfolios within the same single legal entity. Assets of an SPC are therefore either: (a) segregated portfolio assets (i.e. assets and liabilities of each of the segregated portfolios); or (b) general assets of the company (i.e. assets which are not comprised in any segregated portfolios). A creditor of a particular segregated portfolio will only have redress to the assets of that segregated portfolio (and, where those assets are not sufficient for the purposes of discharging its liability to the creditor, to the general assets), not the assets of other segregated portfolios. This therefore enables an SPC to legally ring fence its assets and liabilities as between segregated portfolios, which offers enhanced bankruptcy protection when compared with multi-class structures.

As noted above, the ability to incorporate a company, or register an existing one, as an SPC has historically been restricted in the BVI to regulated funds (which for BVI purposes are open-ended fund structures) and insurance companies. However, with effect from 1 October this restriction will be relaxed and the types of BVI companies eligible to utilise SPC structures will be greatly expanded to include all companies with the exception of certain those which are either:

- licensed to undertake investment business under the Securities and Investment Business Act,

2010 (i.e. broker dealers, investment managers, investment advisors etc.);

- licensed to act as an insurance manager or insurance intermediary under the Insurance Act 2008; or
- licensed to carry on any activity regulated under the Banks and Trust Companies Act, 1990, Company Management Act, 1990 or Financing and Money Services Act, 2009.

The most significant change brought about by these amendments is that going forward SPCs will now be able to be used in closed ended fund structures, which is a welcome development for the BVI funds industry and sponsors of private equity, venture capital and real estate fund structures in particular, as it will facilitate the ring-fencing of assets and liabilities as between portfolios without the need of for such funds to hold assets and transact through SPVs sitting beneath the fund.

The 2018 BCA Amendment Act also includes a number of other legal and administrative matters in relation SPCs, including an obligation to notify the Financial Services Commission on the reinstatement of previously terminated portfolios and allowing for new regulations on the rules governing the payment of dividends and other distributions by individual portfolios. An additional amendment of note is a statutory confirmation that segregated portfolios of the same SPC can contract with one another.

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