

BVI Funds Regulatory Update

Insights - 16/01/2020

The BVI has recently released several important regulatory amendments to its financial services legislation which are applicable to BVI funds and their advisors. This update summarises the key changes.

| Valuation of fund property

Each of the Mutual Funds Regulations, 2010 (the Mutual Funds Regulations) and Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 (the Incubator and Approved Funds Regulations) have been amended in relation to the requirements for the valuation of fund property through the enactment of the Mutual Funds (Amendment) Regulations, 2019 and the Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019 respectively.

Under these amendments, which have application to all categories of BVI funds, all funds are required to maintain a clear and comprehensive policy for the valuation of fund property, with procedures that are sufficient to ensure that the valuation policy is effectively implemented and to ensure that the fund administrator (or in the case of a fund that does not have an independent administrator, the person responsible for controlling the fund's valuation process) adheres to these policies. The new requirements require the valuation policy and procedures to:

- be appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property;
- be consistent with the provisions concerning valuations contained in the fund's constitutional documents and offering documents;
- require valuations to be undertaken at least on an annual basis;
- include procedures for preparing reports on the valuation of fund property; and
- specify the mechanisms in place for the dissemination of valuation information and reports

to investors.

Also introduced, to the extent that there is either no independence between the investment manager and the fund administrator (or person having responsibility for the fund valuation process) or the investment manager is involved in the valuation process, is an express requirement for a fund to identify, manage and monitor any potential conflicts of interest which may arise and disclose to investors the existence of a potential conflict of interest and how any potential conflict of interest will be managed.

This change will therefore require all funds to put in place stand-alone policies and procedures for dealing with the valuation of fund property and dealing with conflicts in relation to fund valuations, which are expected to largely replicate the existing best practices and disclosures on this already appearing in fund documents.

Safekeeping and segregation of fund property

In addition to the above amendments relating to the valuation of fund property, the Incubator and Approved Funds Regulations have been amended by the Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019 in relation to the safekeeping and segregation of fund property. Going forward, the amendments will require all incubator and approved funds to have in place arrangements for the safekeeping of fund property, including the segregation of fund property.

This change brings the statutory requirements for safekeeping of fund property closer to the equivalent existing requirements for other categories of BVI funds.

Acceptable accounting standards

In addition to the above amendments relating to the valuation of fund property, the Mutual Funds Regulations have been amended by the Mutual Funds (Amendment) Regulations, 2019 to stipulate the applicable auditing standards required to be followed for the audit of fund's financial statements, namely requiring US GAAP; International Standards on Accounting (UK); International Standards on Auditing; Hong Kong Standards on Auditing; Canadian Auditing Standards; or such other recognised international auditing standard as may be approved by the FSC on a case by case basis.

While this change replaces the previous generic requirements provided for in Regulation 10(3) (a) of the Mutual Funds Regulations, it is not expected to have a practical impact on funds as it largely codifies the account standards used by BVI funds and retains the ability for the FSC to approve other accounting standards on application.

Closed-ended funds

With the enactment of the Securities and Investment Business (Amendment) Act, 2019 (the SIBA Amendment Act) and the accompanying Private Investment Funds Regulations, 2019 (the PIF Regulations), the British Virgin Islands (BVI) has for the first time introduced a regulatory regime to regulate closed-ended funds.

A closed-ended collective investment scheme will come within the new definition of a "private investment fund" and so will now be subject to further regulation where the following two-part test is satisfied, namely where it:

- 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 a part of the net assets.

For pre-existing close-ended collective investment schemes, there is a six-month transition period during which such funds will be required to put in place all changes necessary for them to come into compliance with the new regulatory regime and apply to the FSC to become recognised as a private investment. This six-month transition period ends on 1 July 2020.

This change will impact all existing close-ended collective investment schemes which fall within the new definition of a "private investment fund". As this definition is widely drafted, most existing closed-ended funds are expected to now be caught by these new requirements and so will going forward be regulated by the FSC. We recommend that any affected structures seek legal advice as to the detail of the new requirements and the implications of being and process for becoming recognised as a "private investment fund".

Foreign Funds

The existing regulatory regime and practices applicable to foreign funds registered with the FSC have been codified by the introduction of the Mutual Funds (Foreign Funds) Regulations, 2019, which regulations also introduce equivalent requirements in relation to the valuation of fund property and accounting standards as have been introduced by the for other categories of BVI funds.

This regulatory change was welcomed by the BVI funds industry as it codifies the existing regulatory framework and therefore introduces certainty for foreign funds intended to be marketed into the BVI.

Data Protection

While still not enacted, a draft bill has also been Gazetted which will introduce data protection legislation into the BVI for the first time. Once enacted, this legislation will necessitate the making of specific amendments to fund documents to deal with the usage of investors' personal data.

This change will bring BVI into line with other jurisdictions who have enacted similar legislation in recent times.

If you would like to discuss either any aspects of any of these regulatory changes or whether your funds or clients may be affected, please speak to your usual Ogier contact.

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Regulatory information can be found under [Legal Notice](#)

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