BRITISH VIRGIN ISLAND

BRITISH VIRGIN ISLANDS INVESTMENT FUNDS, TRENDS AND KEY FEATURES

TRAVERS THORP ALBERGA

BIO

Gaela James is a Cayman Islands investment funds and digital assets attorney. She is skilled at crafting bespoke structural solutions that align with the dynamic nature of offshore investment structures. Gaela empowers clients by guiding them through intricate regulatory landscapes, finding practical solutions that fit their business needs.

Gaela's day to day work encompasses advising on the establishment, governance and ongoing operation of hedge, private equity and venture capital funds and digital asset platforms in the Cayman Islands and the BVI. Her comprehensive expertise in investment fund structures is bolstered by deep insights into privacy and information governance issues in the burgeoning digital asset sector.

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The British Virgin Islands ("BVI") is a popular domicile for a variety of different types of collective investment schemes (i.e. investment funds) and investment managers. The BVI offers six different investment funds products, which are outlined in more detail below. In the past year we have seen increased interest in the use of BVI approved funds by our clients, which can be converted into private or professional funds as portfolios grow.

Our clients like the competitive regulatory fees charged by the Financial Services Authority ('Commission") and the flexible and business-friendly environment of the BVI, combined with its robust regulatory standards. The Commission takes an active and efficient part in reviewing draft offerings and provide useful guidance and training offerings to those new to the industry or the jurisdiction.

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The flexibility and warm reception offered by the jurisdiction and its service providers has attracted a broad spectrum of fund managers, from traditional asset managers to specialists in alternative investment strategies.

Increasingly, we see our clients working within hybrid Cayman-BVI products (covering both investment funds, and investment managers), as well as use of the BVI as an initial start-up zone or stepping stone for more heavily regulated and seeded Cayman products. Two areas where we are seeing hybrid products trending (with products covering the Cayman Islands and BVI) are:

- Use of a BVI approved manager for Cayman investment funds. The regime is popular due to economical incorporation costs, registration fees and ongoing maintenance costs. Furthermore, BVI approved managers are not currently subject to economic substance requirements, significantly lowering burden on smaller managers. More information on BVI approved managers is set out below.

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- BVI start-up investment fund product feeding into a Cayman Islands investment fund (which can take its own direct investors as well), and this may also be paired with an onshore feeder fund. This allows fund managers to take advantage of the more flexible start-up products in the BVI for smaller investors (especially friends and family) while also offering a Cayman Islands investment fund to larger investors, as part of the same structure.

AN OVERVIEW OF BVI INVESTMENT FUND PRODUCTS

The type of fund used by our clients will generally vary depending on the type of investor, the initial minimum investment, costs associated with setting up the fund and the net asset value of the fund. All BVI funds require anti-money laundering, counter terrorist financing, counter proliferation financing, sanctions, common reporting standards and valuation policies and procedures.

More information on the six types of funds offered is set out below.

Incubator Funds

The key features of an Incubator Fund are as follows:

- No more than 20 sophisticated private investors are permitted at any one time.
- A "Sophisticated Private Investor" means a person who is invited to invest in an incubator fund whose initial investment must not be less than US$20,000.
- Assets under management cannot exceed US$20,000,000.
- Once this AUM threshold is reached, an incubator fund may choose to convert into an approved fund, a private fund or a professional fund.
- Incubator funds have a maximum lifetime of two years (with a possible extension of one year, by way of application to the Financial Services Commission ("Commission") after which the fund must be converted into either approved Fund, a professional Fund or a private fund; or the business of the fund must be terminated.
- Financial statements are required to be submitted to the Commission within six months of the end of financial year. They do not need to be audited.

- The fund must appoint an authorised representative in the BVI and two directors, one of whom must be an individual (no other fund service providers are required by law).
- There is no requirement for an offering document. The minimum information required is a written description of the investment strategy of the fund and an investment warning stating certain prescribed matters. Where an offering memorandum is produced this must contain the investment warning.
- Once a completed application for an incubator fund has been submitted to the Commission, the fund may commence business after a period of 2 business days from the date of receipt of the application by the Commission. The Commission has 2 business days from the receipt of an application to advise an applicant that the application is not deemed to be complete. Where a fund is deemed to be an incubator fund the Commission shall issue a certificate evidencing the status of the fund upon payment of a fee of US$200.

Approved Funds

The key features of an approved fund are as follows:

- No more than 20 investors are permitted at any one time (investors do not need to be "Sophisticated Private Investors" (as defined above) or "Professional Investors", (as defined below)).
- There are no minimum subscription requirements.
- Assets under management cannot exceed US$100,000,000. Once this threshold is reached, an incubator fund may choose to convert into a private fund or a professional fund.
- There is no term limit.
- Financial statements are required to be submitted to the Commission within six months of the end of financial year. They do not need to be audited.
- The fund must appoint an authorised representative in the BVI and two directors, one of whom must be an individual. The fund must appoint an administrator.
- There is no requirement for an offering document. The minimum information required is a written description of the investment strategy of the fund and an investment warning stating certain prescribed matters. Where an offering memorandum is produced this must contain the investment warning.
- Once a completed application for an approved fund has been submitted to the Commission, the fund may commence business after a period of 2 business days from the date of receipt of the application by the Commission. The Commission has 2 business days from the receipt of an application to advise an applicant that the application is not deemed to be complete. Where a fund is deemed to be an approved fund the Commission shall issue a certificate evidencing the status of the fund upon payment of a fee of US$200.

Professional Funds

The key features of a professional fund are as follows:

- No limits on the number of investors. However, all investors must be "Professional Investors". "Professional Investor" means a person who (a) whose ordinary business involves, whether for that person's own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund; or (b) who has signed a declaration that he or she, whether individually or jointly with his or her spouse, has net worth in excess of US$1,000,000 or its equivalent in any other currency and that he or she consents to being treated as a professional investor.
- An initial investment for all investors of at least US$100,000 or a foreign currency equivalent.
- No restriction on value of assets under management.
- No term limit.
- Audited financial statements are required to be submitted to the Commission within six months of the end of financial year.
- The fund must have two directors, one of whom must be an individual and appoint the following service providers: authorised representative; administrator; fund manager (it is possible to apply for an exemption to this requirement); custodian (it is possible to apply for an exemption to this requirement); and auditor.
- The offering document is not required to follow any specific statutory format however it must not be misleading. It is necessary to include an investment warning in the offering document where no offering document is issued.
- Recognition process can take between 5-7 working days. A professional fund may carry on business in or from within the BVI for a continuous period not exceeding 21 days if the fund complies with and is managed and administered in accordance with the SIBA and the Mutual Fund Regulations (as revised) other than with respect to recognition. The professional fund must submit an application to the Commission for recognition as a professional fund within 14 days after the commencement of its business.

Private Funds

The key features of a private fund are as follows:

- No more than 50 investors are permitted at any one time, or this number may be exceeded if an invitation to subscribe for, or purchase, fund interests issued by the fund are made on a “private basis” only. “Private basis” includes an invitation which is made (a) to specified persons (however described) and is not calculated to result in fund interests becoming available to other persons or to a large number of persons; or (b) by reason of a private or business connection between the person making the invitation and the investor.
- There are no minimum subscription requirements.
- No restriction on assets under management.
- No term limit.
- Audited financial statements are required to be submitted to the Commission within six months of the end of financial year.
- The fund must have two directors, one of whom must be an individual and appoint the following service providers: authorised representative; administrator; fund manager (it is possible to apply for an exemption to this requirement); custodian (it is possible to apply for an exemption to this requirement); and auditor.
- The offering document is not required to follow any specific statutory format however it must not be misleading. It is necessary to include an investment warning in the offering document where no offering document is issued.

Private Investment Funds

The key features of a Private Investment Fund are as follows:

- Interests can be offered to either no more than 50 investors; or this number may be exceeded if an invitation to subscribe for, or purchase, fund interests issued by the fund are made on a “private basis” only or restricted to Professional Investors (as defined above) and a minimum initial investment of US$100,000.
- No restriction on assets under management.
- No term limit.
- Audited financial statements are required to be submitted to the Commission within six months of the end of financial year.
- The fund must have a person (referred to as an “appointed person”) responsible for undertaking: the management of fund property; the valuation of fund property; and the safekeeping of fund property, including the segregation of fund property. An appointed person may be a person licensed by the Commission or a regulatory authority in a recognised jurisdiction; an independent third party; or a director, partner or trustee of the fund.
- The fund must have two directors, one of whom must be an individual and appoint the following service providers: authorised representative; and auditor.
- The offering document or term sheet should include prescribed disclosures.
- Recognition process can take between 5-7 working days. A private investment fund may carry on business in or from within the BVI for a continuous period not exceeding 21 days if the fund complies with the requirements of SIBA and the Private Investment Funds Regulations (as revised) other than with respect to recognition. The private investment fund must submit an application to the Commission for recognition as a private investment fund within 14 days after the commencement of its business.

Public Funds

The key features of a Public Fund are as follows:

- No restrictions on the investors (i.e. can be offered to retail investors)
- There are no minimum subscription requirements.
- No restriction on assets under management.
- No term limit.
- Audited financial statements are required to be submitted to the Commission within six months of the end of financial year.
- The fund must have two directors, both must be individuals and approved by the Commission and appoint the following service providers: authorised representative; administrator; fund manager; custodian (it is possible to apply for an exemption to this requirement); and auditor.
- A public fund must have a prospectus with prescribed disclosures.
- Registration with the Commission can take several weeks

AN OVERVIEW OF APPROVED MANAGERS

Finally we have mentioned above the trending popularity of the BVI’s approved manager regime. The approved managers Regime is designed as a regulatory “light” regime in that the approved managers are subject to fewer continuing obligations than managers and advisers holding a full licence under the Securities and Investment Business Act. The regulatory code does not apply to approved managers and there is no requirement for the appointment of an auditor or a compliance officer.

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The key features of an approved manager are as follows:

- An approved manager can act as an investment manager or investment advisor to BVI private, approved or professional funds, closed ended BVI funds as well as funds from a list of “recognised jurisdictions” (that includes the Cayman Islands, the USA, Hong Kong, Ireland and many others) that have equivalent characteristics to BVI private or professional funds.
- An approved manger may not exceed: (a) aggregate assets under management of US$400 million in the case of open-ended funds; and (b) aggregate capital commitments of US$1 billion in the case of closed-ended funds.
- If the approved manager is a company, it must at all times have at least two directors (at least one of whom must be an individual). If it is a limited partnership, the partnership must at all times have at least one general partner.
- An approved manager must at all times have a BVI authorised representative. The functions of the authorised representative are to: (a) act as the main intermediary between the approved manager and the Commission; (b) accept service of notices and other documents on behalf of the approved manager; and (c) keep at its BVI office such records, or copies of such records, as may be prescribed by law from time to time.
- An approved manager application must be submitted at least seven days before the proposed business commencement date.
- The application process is straightforward and requires the submission of a specified list of documents to be submitted to the Commission.