Client Memorandum

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British Virgin Islands Investment Fund Structures

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1 Introduction

1.1 The British Virgin Islands ("**BVI**") offers six principal types of investment fund structures:

(a) Incubator Fund

(b) Approved Fund

(c) Professional Fund

(d) Private Fund

(e) Private Investment Fund

(f) Public Fund

1.2 The appropriate structure will depend on a range of factors, including the target investor base, minimum subscription levels, anticipated assets under management, regulatory burden and cost considerations.

1.3 All BVI funds are subject to applicable anti-money laundering, counter-terrorist financing, counter-proliferation financing, sanctions and Foreign Account Tax Compliance Act ("**FATCA**") and Common Reporting Standard ("**CRS**") obligations.

2 Investor Categories

2.1 **Sophisticated Private Investor**

A person invited to invest in an Incubator Fund who makes a minimum initial investment of at least US$20,000 (or equivalent).

2.2 **Professional Investor**

a person:

(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.

2.3 **Private Basis**

An invitation made:

(a) to specified persons and not calculated to result in fund interests becoming available to a large number of persons; or

(b) by reason of a private or business connection between the promoter and the investor.

3 Incubator Funds

3.1 Incubator Funds are governed by the Securities and Investment Business (Incubator and Approved Funds) Regulations.

3.2 The key features of an Incubator Fund are as follows:

(a) No more than 20 "Sophisticated Private Investors" are permitted at any one time.

(b) Minimum initial investment of at least US$20,000 or the foreign currency equivalent.

(c) Assets under management cannot exceed US$20,000,000. Once this threshold is reached, an Incubator Fund may choose to convert into an Approved Fund, a Private Fund or a Professional Fund.

(d) Maximum lifetime of two years (with a possible extension of one year, by way of application to the Financial Services Commission ("**Commission**") after which:

(i) the fund must be converted into either an Approved Fund, a Professional Fund or a Private Fund; or

(ii) the business of the fund must be terminated.

(e) 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.

(f) 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).

(g) 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.

(h) 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. The application and annual renewal fee is US$ 1,800. 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.

4 Approved Funds

4.1 Approved Funds are governed by the Securities and Investment Business (Incubator and Approved Funds) Regulations.

4.2 The key features of an Approved Fund are as follows:

(a) No more than 20 investors are permitted at any one time.

(b) There are no minimum subscription requirements.

(c) Assets under management cannot exceed US$100,000,000. Once this threshold is reached, an approved fund may choose to convert into a Private Fund or a Professional Fund.

(d) No term limit.

(e) 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.

(f) 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.

(g) 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.

(h) 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. The application and annual renewal fee is US$ 1,800. 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.

5 Professional Funds

5.1 Professional Funds are governed by the Securities and Investment Business Act (Revised) and the Mutual Funds Regulations (Revised).

5.2 The key features of a Professional Fund are as follows:

(a) No limits on the number of investors. However, all investors must be "Professional Investors".

(b) An initial investment for all investors of at least US$100,000 or a foreign currency equivalent.

(c) No restriction on value of assets under management.

(d) No term limit.

(e) Audited financial statements are required to be submitted to the Commission within six months of the end of financial year.

(f) The fund must have two directors, one of whom must be an individual and appoint the following service providers:

(i) authorised representative;

(ii) administrator;

(iii) fund manager (it is possible to apply for an exemption to this requirement);

(iv) custodian (it is possible to apply for an exemption to this requirement); and

(v) auditor.

(g) The offering document is not required to follow any specific statutory format however it must not be misleading. Where no offering document is issued, the fund must provide prescribed investment warnings to investors.

(h) 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 (Revised) other than with respect to recognition. The application fee is US$850, US$1,200 is payable on recognition and the annual renewal fee is US$ 1,200. 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.

6 Private Funds

6.1 Private Funds are governed by the Securities and Investment Business Act (Revised) and the Mutual Funds Regulations (Revised).

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

(a) No more than 50 investors are permitted at any one time, or fund interests issued by the fund are made on a "private basis" only.

(b) There are no minimum subscription requirements.

(c) No restriction on assets under management.

(d) No term limit.

(e) Audited financial statements are required to be submitted to the Commission within six months of the end of financial year.

(f) The fund must have two directors, one of whom must be an individual and appoint the following service providers:

(i) authorised representative;

(ii) administrator;

(iii) fund manager (it is possible to apply for an exemption to this requirement);

(iv) custodian (it is possible to apply for an exemption to this requirement); and

(v) auditor.

(g) 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 where no offering document is issued. The application fee is US$850, US$1,200 is payable on recognition and the annual renewal fee is US$ 1,200.

7 Private Investment Funds

7.1 Private Investment Funds are governed by the Private Investment Funds Regulations (Revised).

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

(a) Interests can be offered to either:

(i) no more than 50 investors;

(ii) where fund interests issued by the fund are made on a "private basis" only; or

(iii) to Professional Investors with a minimum initial investment of US$100,000.

(b) No restriction on assets under management.

(c) No term limit.

(d) Audited financial statements are required to be submitted to the Commission within six months of the end of financial year.

(e) The fund must have a person (referred to as an "appointed person") responsible for undertaking:

(i) the management of fund property;

(ii) the valuation of fund property; and

(iii) the safekeeping of fund property, including the segregation of fund property.

(iv) An appointed person may be:

A. a person licensed by the Commission or a regulatory authority in a recognised jurisdiction;

B. an independent third party; or

C. a director, partner or trustee of the fund.

(f) The fund must have two directors, one of whom must be an individual and appoint the following service providers:

(i) authorised representative; and

(ii) auditor.

(g) The offering document or term sheet should include prescribed disclosures.

(h) 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 (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.

8 Public Funds

8.1 Public Funds are governed by the Securities and Investment Business Act (Revised) and the Mutual Funds Regulations (Revised).

8.2 The key features of a Public Fund are as follows:

(a) No restrictions on the investors (i.e. can be offered to retail investors).

(b) There are no minimum subscription requirements.

(c) No restriction on assets under management.

(d) No term limit.

(e) Audited financial statements are required to be submitted to the Commission within six months of the end of financial year.

(f) The fund must have two directors, both must be individuals and approved by the Commission and appoint the following service providers:

(i) authorised representative;

(ii) administrator;

(iii) fund manager;

(iv) custodian (it is possible to apply for an exemption to this requirement); and

(v) auditor.

(g) The Public Fund must have a prospectus with prescribed disclosures.

(h) Registration with the Commission can take several weeks.

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