

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

Insights - 01/04/2021

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

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Approved Fund

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On-going obligations

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

Incubator Fund

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- 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

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- 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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