

How BVI differentiates itself from other jurisdictions?

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In an era where investment managers have increasing choice between potential jurisdictions to domicile their hedge fund vehicles and the distinguishing features between those jurisdictions (whether they are one of the traditional offshore jurisdictions such as Bermuda, BVI, Cayman or one of the Channel Islands or an onshore jurisdiction such as Ireland, Luxembourg or Malta) have become less and less, one of the challenges which has faced all offshore jurisdictions has been how to distinguish their fund offering from the fund offering available elsewhere. The BVI has been not alone in facing this challenge.

In the continuing aftermath of the 2008 financial crisis, the dual political drivers to better regulate the financial system and more effectively manage systemic risk within the financial system, continue to influence the regulatory agenda within the hedge fund industry and so direction in regulatory developments. In fulfilling its obligations to this regulatory agenda, all fund domicile jurisdictions have spent considerable time developing their funds offering so as to offer “right regulation”. For funds aimed at institutional investors, this has largely involved jurisdictions tinkering with their existing regimes, to ensure that they remain “best in class”. However, for funds aimed at sophisticated non-institutional investors, jurisdictions have been developing new fund products. Some jurisdictions have done this by developing new manager led products, where it is the fund’s investment manager which is regulated and the fund itself left unregulated (for instance the Luxembourg RAIF, with similar manager led products expected shortly in both Guernsey and Jersey); others have done this by way of introducing exemptions into their existing regulatory regime to accommodate smaller offerings (for instance the exempted fund regime in Cayman and the very private fund regime in Jersey, both of which offer funds with less than 15 investors an easier regulatory ride and have proved very popular amongst users); or developing new fund products to complement their existing offerings, which are aimed at providing investment managers with new regulatory alternatives. The BVI has followed this latter path and

developed three new products aimed at its traditional market sweet spot.

The BVI has traditionally offered investment managers a cost effective fund product appealing, in particular, although not exclusively, to small and mid sized investment managers, particularly start-ups. Some of these managers have grown into large institutional managers (such as Appaloosa Management; Caxton Associates; GAM; Graham Capital; and King Street Capital), whilst others have happily remained in the small/ mid sized end of the industry. To provide solutions for its traditional sweet spot, the BVI has successfully introduced three new products, namely the “Approved Manager”; the “Incubator Fund”; and the “Approved Fund”, each of which has offered hedge fund managers solutions which might not otherwise be available to them.

To summarise the key features of each product briefly in turn:

Approved Manager

The “Approved Manager” product was introduced by the enactment of the Investment Business (Approved Managers) Regulations, 2012 (the **Approved Manager Regulations**), at the end of 2012 and then further refined at the beginning of 2014, to provide eligible investment managers establishing their investment management vehicles (as opposed to fund vehicles) in the BVI an ability to access a less regulated regime. However, unlike alternative regimes available elsewhere which rely upon exemptions (eg the Cayman exempted manager or the Jersey PIRS exemption), investment managers utilising the Approved Manager Regulations continue to be licenced entities, holding a licence issued by the BVI’s Financial Services Commission (the **FSC**).

The Approved Manager product is able to complement the more involved regulatory regime available for investment managers under the Securities and Investment Business Act, 2010 (**SIBA**) by offering a lighter touch regulatory regime with quicker time to market. Where we have seen the Approved Manager being particularly taken up in the sector has been for hedge fund managers looking to start-up by managing managed accounts.

To be eligible to take advantage of the Approved Manager Regulations, investment managers have need to have aggregate assets under management (or in the case of a close-ended funds, aggregate capital commitments) below stipulated thresholds (currently set at US\$400 million for managers of open-ended fund products and aggregate capital commitments of US\$1 billion for managers of close-ended fund products).

Incubator Fund

The “Incubator Fund” product was introduced by the enactment of the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 (the **Incubator and Approved Fund Regulations**).

The Incubator Fund product is aimed at the start-up investment managers, with one key feature of

the regime being that upon the second anniversary of being an Incubator Fund or, if sooner, once the fund has grown beyond a stated minimum size (more than 20 investors or assets under management of more than US\$ 20 million for two consecutive months), the Incubator Fund is required to convert to a more regulated fund product. This therefore gives start-up investment managers an opportunity to get a foot in the door, by offering them a cost effective regulated fund solution, by assisting them in bringing their funds to market whilst managing their operational cost base.

The key features of an Incubator Fund are that it is available to “sophisticated private investors” only (for these purposes, to be a “sophisticated private investor” a person must be invited to invest and the amount of his or her minimum initial investment must not be less than US\$ 20,000); with a maximum of 20 investors able to invest in the Incubator Fund at any one time; and aggregate assets under management not exceeding US\$ 20 million (or its equivalent in another currency). As mentioned above, Incubator Fund status is limited to two years (with a possible further 12 month extension available at the discretion of the FSC), following which the Incubator Fund must either (i) convert into a Private Fund; Professional Fund; or an Approved Fund or (ii) cease operating as a fund.

Approved Fund

Like Incubator Funds, the “Approved Fund” product was introduced by the Incubator and Approved Fund Regulations.

The Approved Fund product is very much aimed at family offices and friends and family offerings. Unlike an Incubator Fund, Approved Fund status is indefinite.

The key features of an Incubator Fund are that it is available to a maximum of 20 investors and its aggregate assets under management shall not exceed US\$ 100 million (or its equivalent in another currency).

Whilst an Approved Fund’s eligibility status is indefinite, where it either exceeds the maximum thresholds for aggregate assets under management or the number of investors for two consecutive months, it is, like an Incubator Fund, required to convert its status.

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