



# Legal Insights

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## KEY FEATURES AND BENEFITS OF A BVI APPROVED FUND

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Under the Securities and Investment Business Act, 2010 of the British Virgin Islands (“SIBA”), the Financial Services Commission (the “FSC”) of the British Virgin Islands (“BVI”) offers a range of investment business licenses and allows for the registration of Public Funds and recognition of Private Funds and Professional mutual funds. These are all open-ended investment funds.

In addition to the above investment fund structures, BVI also offers Incubator Funds and Approved Funds which are particularly attractive for Start-up Managers and also Emerging Managers (these are typically Asset Managers whose assets under management (AUM) range from US\$25M – \$100M and have typically raised less than three (3) funds).

The BVI’s Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 (the “Regulations”) allows for the creation of Incubator Funds and Approved Funds to provide more flexibility to smaller and start-up financial services businesses. Under these fund categories, managers and principals of smaller, open-ended funds may be approved by the FSC to conduct business within a lighter regulatory framework. An advantage of these fund categories is that they provide an opportunity for smaller funds that may not typically qualify as Private or Professional Funds to conduct business and make investment offerings to qualifying persons.

### Features of the Approved Fund

In this Briefing Note we will focus on the Approved Fund, exploring its main features and benefits, and the requirements, and obligations that apply to the Approved Fund. The main features are as follows;

- i. **Structure.** An Approved Fund can be structured as a BVI business company or a limited partnership.
- ii. **It is limited to a maximum of 20 Investors.** If, during any two consecutive months period, the number of investors in the Approved Fund exceeds twenty (20), it must notify the FSC in writing and simultaneously submit an application for the conversion and recognition of the Fund as either a Private Fund or a Professional Fund. Notice to the FSC must be submitted within seven (7) days of exceeding the specified limit after the two months period, unless at the time of the notification, the Approved Fund no longer exceeds the specified limit.
- iii. **There is no minimum initial investment for each investor.** There is no minimum initial investment amount set for each investor into an Approved Fund. However, in the event that an Approved Fund upgrades to a Professional Fund, its investors will need to certify that they are

professional investors and will need to demonstrate that they have subscribed for an investment of at least US\$100,000 (or its equivalent in another currency) in the Fund, or top-up their existing investment amount for meeting the US\$100,00 requirement. There is no statutory equivalent to the grandfathering of the Incubator Fund's sophisticated investors.

- iv. **It is limited to a Maximum Net Asset of US\$100 million or its equivalence in any other currency.** If, during any two consecutive months period, the Approved Fund exceeds this US\$100,000,000 threshold, it must notify the FSC in writing and simultaneously submit an application for the conversion and recognition of the Approved Fund as either a Private Fund or a Professional Fund.
- v. **There is no term limit on the Fund.** The Approved Fund is not limited to a specific lifetime, like an Incubator Fund. The Approved Fund is aimed at providing a solution to open-ended funds that target friends and family, family offices and/or an investor base within a close network to run investment strategies indefinitely but without focusing mainly on building a verifiable track record. The structure has the advantages of (i) a shorter launch timeframe, (ii) fewer regulatory obligations, and (iii) less required functionaries and service providers as it can be operated without an investment manager, auditor or custodian.
- vi. **A Summary of the Key Terms of the Offering to Investors with Investor Warning is required.**
  - i. **There is no requirement to file audited financial statements.** Whilst the Fund must have accounts showing a true and fair view of its financial affairs, there is no requirement for its accounts to be audited and filed with the FSC.
  - ii. **Commencement.** The Fund can commence business two days from the date that the FSC receives the application.
  - iii. **Functionaries.** The Fund must have a fund administrator but are not required to have a custodian or manager.

### Benefits

- i. Reduced organizational costs as there is no need for a Private Placement Memorandum as a Summary of the terms of the offering with investor warnings and investment strategy information will suffice.
- ii. No requirements for authorized capital or share capital. Shares can be issued without par value.
- iii. A 'lighter-touch' regulatory regime.
- iv. As there is no term limit for the Fund, it provides the management team with a platform that can focus on running the investment strategies without the constraints of time or the pressure of upgrading to a more regulated product like the Professional Fund or the Private Fund unless the performance of the Approved Fund triggers a mandatory upgrade.
- v. Reduced service provider costs as there is no need for a custodian, manager or auditor.
- vi. Fast launch timeframe.

### Requirements

Approved Funds have limited functionary requirements, especially when compared to Professional Funds, Private Funds, or Public Funds. This means that the Approved Fund does not require an investment

manager, custodian or auditor and it does not need to provide an offering memorandum to investors. It is only required to provide a summary of terms with a description of the investment strategy and appropriate warnings to investors so they could make an informed decision before investing in the Approved Fund.

Approved Funds must have a minimum of two directors at all times (one of which must be an individual). As part of the application to the FSC, the directors of the Approved Fund are required to submit their resume to the FSC to check if they are fit and proper persons.

**Anti-Money Laundering:** Approved Funds are subject to the BVI anti-money laundering regime and are required to have in place anti-money laundering policies and procedures and conduct client due diligence on their investors.

**FATCA/CRS:** Approved Funds will be BVI reporting financial institutions for the purposes of compliance with the US Foreign Account Tax Compliance Act (FATCA) and the OECD's common reporting standard for automatic exchange of financial account information (CRS) and the intergovernmental agreements and domestic legislation implementing FATCA and CRS in the BVI (AEOI) and will therefore be required to, among other things, register with BVI FARS and deal with annual reporting for FATCA and/or CRS.

***This publication is not intended to be a substitute for specific legal advice or a legal opinion. For specific advice on the formation and launch of a BVI Approved Fund and submitting an application to the BVI FSC for recognition, please contact your usual Loeb Smith attorney or any of the following:***

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