

LEGAL INSIGHT

Will the BVI Approved Manager regime become, even for Cayman Islands' Funds, the preferred offshore option for establishing an Investment Manager?

As the regulatory requirements and cost burden increase for investment management entities in the Cayman Islands, many of our clients are looking for other offshore solutions. Under the Cayman Islands' Securities Investment Business Act (2020 Revision) as amended, all Cayman entities carrying on securities investment business as investment managers and/or investment advisers ("**SIBL Managers and/or Advisers**") are required to either (i) register with the Cayman Islands Monetary Authority ("**CIMA**") as a Registered Person, or (ii) apply to CIMA for a licence in order to carry on such business. The vast majority of these SIBL Managers and/or Advisers opt for the more straightforward status of Registered Person which requires the applicant to, among other things, (i) have at least two (2) Directors, (ii) comply with continuing reporting obligations to CIMA, (iii) appoint AML officers and have a compliance manual, and (iv) pay the fee of approx. US\$6,098 for first registration with CIMA and thereafter pay the same fee to CIMA on an annual basis for continued registration.

The impact of the Economic Substance Act on Cayman Investment Managers

The logistical challenges and economic costs of complying with the Economic Substance Act has also caused a substantial increase in the number of existing Cayman Islands' Investment Managers (who exercise discretionary authority over the investments they manage) either winding down their affairs and de-registering from CIMA or restructuring their relationship with investment funds in order to deal with these challenges and control costs. It has also meant that clients looking to establish new funds in the Cayman Islands, which continue to be the premier offshore jurisdiction for establishing investment funds, are increasingly looking for new offshore options for establishing an investment management entity.

BVI Approved Manager regime

One attractive offshore option is establishing an "Approved Manager" in the British Virgin Islands ("**BVI**") under the Investment Business (Approved Managers) Regulations 2012 (As Amended) (the "**Regulations**") and the Approved Investment Managers Guidelines. The BVI Approved Manager regime has less onerous regulatory requirements than the licenced regime in the BVI and is similar in a number of respects to the Registered Person regime in the Cayman Islands. However there are some crucial differences.

Key features of the BVI Approved Manager regime

- i. A BVI company or limited partnership can apply to the BVI Financial Services Commission (the "**FSC**") for approval as an Investment Manager and if approved would become an "Approved Manager".

- ii. The application fee payable to the FSC is US\$1,000 (significantly less than the application fee of circa US\$6,098 payable for an Investment Manager with Registered Person status in the Cayman Islands).
- iii. An application to the FSC must be submitted at least seven (7) days prior to the intended date for the commencement of relevant business and provided the applicant makes the submission to the FSC within this time period, the applicant may commence and carry on relevant business for a period of up to thirty (30) days from the date of submission of the application (such period being extendable for a further period of 30 days by the FSC). During this 30 day (or extended) period, the applicant will be deemed to have been approved under the Regulations if ultimately approved by the FSC.
- iv. Significantly, an Approved Manager does not fall within the scope of the BVI economic substance law regime.
- v. An Approved Manager has no capital adequacy or professional indemnity insurance requirements.
- vi. Under the Approved Manager regime there is a US\$400 million cap on assets under management for open-ended funds and a cap of US\$1 billion of capital commitments for closed- ended funds. If these limits are exceeded, the Approved Manager must inform the FSC within seven (7) days. The funds it manages can be funds in the BVI or equivalent funds in another recognized jurisdiction (e.g. the Cayman Islands, China, Switzerland, Ireland, Luxembourg, Hong Kong, Singapore, the United Kingdom, and the United States). If these limits are breached, then within three (3) months of the limit being breached, the Approved Manager is required to either (i) apply for a licence under Part I of the BVI Securities Investment Business Act, or (ii) the funds which the Approved Manager manages or advises must have decreased back below the limits otherwise it must immediately cease carrying on relevant business on the expiry of the three (3) months period.
- vii. An Annual Return for the Approved Manager is required to be filed with the FSC to confirm the Approved Manager and its senior team remain in compliance with BVI regulations, along with details of the funds under management and any significant complaints received from investors.
- viii. An Approved Manager is required within fourteen (14) days of the change of any information submitted to the FSC during the application process to notify the FSC in writing of the change, providing details of the change and a written declaration in the prescribed form as to whether or not the change complies with the requirements of the Regulations.
- ix. **Financial Statements** - Annual financial statements must be submitted, however these are not required to be audited.
- x. **Directors** - Approved Managers must retain at least two (2) directors (as is the case under the Registered Person regime in the Cayman Islands) and always have a licensed authorised representative in the BVI.
- xi. **Annual Fee** - The Approved Manager is required to pay an annual fee of US\$1,500 (significantly less than the annual registration fee of circa US\$6,098 payable for an Investment Manager with Registered Person status in the Cayman Islands) to the FSC for renewal of its approval as an approved manager.
 - i. **Anti-Money Laundering Compliance** - Unlike the position for Registered Persons in the Cayman Islands, the Approved Manager is exempt from the requirement to appoint a compliance officer. However an Approved Manager is required (i) to appoint a money laundering reporting officer (MLRO) and (ii) maintain policies and procedures with respect to client identification, record keeping, internal reporting and internal controls and communications, which meet the requirements set out in the BVI Anti-Money Laundering Regulations and the BVI Anti-Money Laundering and Terrorist Financing Code of Practice.

For specific guidance on the BVI Approved Manager regime, please contact your usual Loeb Smith attorney or any of:

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