



CIRCLE
PARTNERS

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Guide to Investment Funds in the British Virgin Islands



Circle Partners is a global fund administrator providing a comprehensive range of fund administration and corporate services to investment funds.

Company profile

Established in 2000 with our first office in the Netherlands, we presently offer our fund services from the world's major financial jurisdictions. Our clients range from asset managers, banks to family offices and are primarily based in Europe, Asia and the Americas. We service both traditional and alternative investment funds, based onshore and offshore. Our fund accounting and investor services teams are supported by in-house legal and IT specialists. We use state-of-the-art accounting and shareholder systems, enabling easy processing of data and swift financial reporting to both fund managers and investors. Circle Partners is privately owned and fully independent.

WHY THE BRITISH VIRGIN ISLANDS?

The British Virgin Islands or simply BVI is a world leader for excellence and innovation in financial services and is committed to continue playing its leading role in delivering a responsible and effectively regulated global business environment.

As a British Overseas Territory, the BVI offers all the security and stability that is traditionally associated with the British Flag. It is responsible for its self-government through a democratically elected House of Assembly. The United Kingdom remains responsible for the BVI's external affairs, defense, internal security and the courts.

The balance between a sound regulatory framework that meets and in most cases exceeds international standards, an entrepreneurial business community, and a government committed to the development of cutting edge legislation and policies has produced some clear advantages for the jurisdiction including:

- Enduring political and economic stability;
- A pool of knowledgeable and qualified business and legal professionals;
- A business-friendly operating environment;
- Efficient company formation and administration processes;
- An renowned commercial court with possibility of final appeal to Privy Council in London;
- Excellent telecommunication services;
- Innovative legislation;
- Absence of currency controls;
- Tax neutrality (no capital gains tax, value added tax or withholding tax);
- Official representation of the jurisdiction with offices in London and Hong Kong with ability to respond to clients in real time.

The BVI Business Companies Act ("BCA") allows for different kind of companies to be formed. Due to its flexibility and low incorporation and recurring costs, the BVI Business Company ("BC") is the structure most used by businesses from all over the world. The BVI has approximately 400,000 active BCs on its Register.

In addition to regular business purposes such as trading and owning real estate, the BC is used for aircraft and ship registration. The Virgin Islands Special Trust Act ("VISTA")

and Private Trust Company (“PTC”) legislation have enhanced the BVI’s position as the jurisdiction for trust settlements and operations. Captive insurance business is carried out under the BVI Insurance Act.

In addition, the BVI is a jurisdiction for offshore domiciled funds with approximately 2,000 registered and recognised investment funds. The Securities and Investment Business Act, 2010 (“SIBA”) provides the BVI with an effective regulatory platform that is in tune with global regulatory standards and best practices. Moreover, the Approved Managers Regime provides a flexible, efficient, and commercially attractive approach to regulating various types of asset managers.

REGULATORY FRAMEWORK

The statutory legislation governing most funds in the BVI is the Securities and Investment Business Regulations 2015 (“SIBA”) and the Mutual Fund Regulations, 2010. The SIBA govern the newly introduced Incubator and Approved Funds.

The criteria for a BVI domiciled fund vehicle to qualify for regulation under SIBA are:

- collecting and pooling of investor money for the purpose of collective investment; and
- issuing shares in a company, interests in a limited partnership or a unit trust, which entitle the holder to receive on demand or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or part of the net assets of the fund.

Accordingly, all open-ended fund vehicles (with the exception of funds set up for investment by (I) one or more members of the same family or (II) a single investor) will be subject to SIBA and regulation by the Financial Services Commission (“FSC”). Closed-ended fund vehicles (where there is no reoccurring possibility to redeem) are outside the scope of SIBA and consequently can be set up and launched without the need for a license from the FSC.

Under SIBA, five categories of regulated investment funds exist:

- Public funds
- Private funds;

- Professional funds;
- Incubator funds;
- Approved funds.

Public, private and professional funds are recognised funds and accordingly will need to obtain a Certificate of Recognition from the FSC. Incubator and approved funds will merely be registered and will obtain a certificate from the FSC confirming their regulatory status.

Public funds

A public fund is a BVI open-ended fund that offers its investment shares to the general public and therefore attracts the highest degree of regulation. The regulatory requirements and licensing procedure for a public fund are more stringent than those for private or professional funds, given the nature of its investors (public funds are for retail investors). A public fund is unable to commence business until such time as it registered with the FSC. A public fund must publish a prospectus including the information required by SIBA and must also distribute its audited annual financial statements.

Private funds

In order to qualify as a private fund, an investment fund either has no more than 50 investors or makes an invitation to subscribe for shares (or interests of a limited partnership or units of a unit trust) on a strictly private basis, which has to be stated in its constitutional documents. An application has to be filed with the FSC before a private fund can carry on business. The invitations to subscribe in a fund to a significantly greater number of persons than 300 would cast doubt upon compliance with the spirit of “private basis” which is embodied in SIBA on the grounds that a large number of investors would not be consistent with what is commonly understood to be “private”.

Professional funds

Professional funds are most suitable for sophisticated investors. A professional fund may only issue fund interests to professional investors as defined below.

A professional investor (“Professional Investor”) is a person:

- I whose ordinary business involves, whether for its own account or the account(s) of (an)other(s), the acquisition or disposal of property of the same kind as the property, or a substantial part of the property which is (or will be) owned by the Fund; or

Global reach, local expertise and presence

II whose net worth (in the case of a natural person, either individually or jointly with his/her spouse) exceeds one million dollars in United States currency (USD 1,000,000.00) or its equivalent in any other currency, and who consents to being treated as a Professional Investor for the purposes of investment in the fund.

In this type of fund, the minimum initial investment by each investor must not be less than USD 100,000 (or its equivalent in any other currency), unless an investor is an exempted investor. An exempted investor ("Exempted Investor") means: the investment manager, administrator, promoter or underwriter of the fund; or any employee of the investment manager of the fund.

Incubator funds

The incubator fund is aimed at managers who do not necessarily have the benefit of seed investor capital, but

wish to set up quickly and establish a track record with minimal costs and without having to comply with onerous regulatory obligations. Under the conditions that the fund is (I) only marketed to sophisticated investors (with a minimum investment of USD 20,000), (II) will have no more than USD 20 million in net assets and (III) will have a maximum of 20 investors, it can operate for a period of two years (which period can be extended by one additional year). Prior to the end of this period it will be necessary to make an application to the FSC for the fund to be recognised as either a private fund or a professional fund or to be approved as an approved fund. There is no requirement to appoint functionaries (i.e. administrator, custodian, manager or auditor).

Approved fund

The approved fund is aimed at managers who wish to establish a fund for the longer term, but on the basis of a more private offering, which may appeal to family offices or an investor base of close connections. The fund is similar to a private fund, but subject to less regulation and may have a maximum of 20 investors and a maximum of USD 100 million in aggregate investments. An administrator must be appointed, but there is no need to appoint a custodian, manager or auditor. Conversion to a private or professional fund is required if the threshold of 20 investors or maximum investments is exceeded for a period of more than two consecutive months, unless remedied within seven days.

INVESTMENT FUND VEHICLES

Investment funds can be structured as one of the following:

- a BVI Business Company;
- a Segregated Portfolio Company;
- a Limited Partnership;
- a Unit Trust.

The vast majority of investment funds in the BVI are established as a BVI Business Company limited by shares under the BCA. Limited partnerships are the second most popular, while unit trusts are rare.

BVI Business companies

A BC is the most popular vehicle for a couple of reasons. Firstly, it has legal personality and enters into its own legal obligations. Shareholders have no direct legal interest in any



of the assets of the investment fund, which are owned by the fund company itself. A shareholder's liability is limited to the amount paid-up for the shares purchased.

There is ample flexibility in terms of drafting the memorandum and articles of association and the directors may designate different series of shares within each class without the necessity to amend the constitutional documents. A BC only has to state the maximum number of shares that it may issue and shares can be issued with or without par value.

Segregated portfolio company

In a segregated portfolio company or simply an SPC, there is a legal segregation by statute between the different investment portfolios. As a result, the assets of a certain portfolio will not be at risk from creditors of another portfolio within the same fund structure. This feature makes the SPC attractive for managers and promoters of so-called umbrella funds.

Limited partnerships

A limited partnership is established by a general partner and at least one limited partner, together executing articles of partnership, which are submitted to the registered agent named in the articles. A Memorandum of Partnership is submitted to the BVI Registry of Corporate Affairs ("RCA").

The articles of partnership usually stipulate partnership contributions and withdrawals and the day-to-day running rules of the partnership; they do not need to be filed with the FSC. A disadvantage of this structure is that the general partner is liable for all debts and obligations relating to the limited partnership. The limited partner on the other hand is not liable in this way in as far as it does not participate in the control of the limited partnership business.

Unit trusts

Unit trusts are established by a deed of trust and do not have legal personality. The trustee has legal capacity and holds the assets of the fund based on the terms of the deed of trust for the investors in the scheme. Thus, holders of units in this scheme are the beneficial owners of the trust assets.

INVESTMENTS

Under SIBA, there are no pre-set prohibitions or limitations on the use of leverage, nor on the types of financial instruments or geographical markets that a fund may invest in, although the FSC will require certain safeguards, in particular for public funds. In particular, The FSC will require that the fund's investments will match its liquidity profile and thus that requests for redemption by investors can be met.

TAXATION

BVI funds are not subject to any income, withholding or capital gains taxes in the BVI and there are no capital or stamp duties levied in the BVI on the issue, transfer or redemption of shares, interests or units of the fund. Additionally, investors in BVI funds will not be subject to any income, withholding or capital gains taxes in the BVI with respect to the shares, interests or units of the fund owned by them and distributions (if any) received on such shares, interests or units, nor will they be subject to any estate or inheritance taxes in the BVI.

KEY SERVICE PROVIDERS

BVI funds, recognized or registered under SIBA, are generally required to appoint the following functionaries:

- an investment manager;
- an administrator;
- a custodian;
- an auditor;
- an authorized representative;
- a minimum of two directors.

The abovementioned functionaries must either meet the FSC's 'fit and proper' criteria, or must be located in one of the BVI's recognized jurisdictions (see for a listing: www.bvifsc.vg). Functionaries from a non-recognized jurisdiction may also be appointed, provided that they will satisfy the FSC that their jurisdiction has an effective regulation on investment businesses in place.

Investment manager

A BVI domiciled investment manager can either be licensed under Part I of SIBA or be approved under the Investment Business (Approved Managers) Regulations, 2012 as amended (the "AMR").

License under SIBA

In order to manage mutual funds under SIBA, a legal entity has to obtain a license Category 3, sub-category B (and possibly E). Under this regime each director, shareholder (holding a significant interest of 10%) and officer of the person seeking a license must satisfy the FSC's fit and proper criteria. The application also requires a detailed business plan. Multiple ongoing requirements are in place, such as the appointment of an anti-money laundering reporting officer and compliance officer, appropriate compliance systems and controls, the preparation of financial statements in accordance with certain accounting standards and the appointment of an authorized representative.

Approved manager regime

The AMR knows a lighter regulation and licensing process whereby the manager may carry on business 7 days after submitting the application form to the FSC, without having to wait for the outcome. After being approved under the AMR, an approved investment manager may serve an unlimited number of private or professional funds recognized under SIBA, being restricted only by the amount of aggregated assets under management, which for open-ended funds can not exceed USD 400 million. An approved manager may also manage funds domiciled outside of the BVI, provided that these funds will meet similar criteria as private or professional funds. An approved manager must appoint an anti-money laundering reporting officer.

The advantages of this regime are substantial. Although an approved investment manager needs to submit financial statements to the FSC, there is no audit requirement. This is a cost effective option and most of the ongoing obligations are related to obtaining approval when a change in application is desired.

Administrator

With the exception of incubator funds, all BVI funds must appoint an administrator. The administrator will typically oversee the day-to-day operations of the fund, calculate and determine the net asset value ("NAV") of the fund, process subscriptions and redemptions of the fund, act as the registrar and transfer agent, keep various records of the fund and undertake anti-money laundering procedures on behalf of the fund. There is no requirement for the administrator chosen to be based in the BVI.

Custodian

All recognised funds must appoint a custodian. The custodian must be functionally independent from the manager and the administrator. A fund may apply for an exemption to engage a custodian, but in such event the FSC will want to be informed about the custodianship arrangements for the fund (for instance, whether a prime broker or the fund's directors will be responsible for the safekeeping of the fund's assets).

Auditor

All public, private and professional funds are required to appoint, and at all times have, an auditor for the purposes of auditing their financial statements. They are required to submit, in electronic format, a final copy of their audited financial statements to the FSC within six months of the end of each financial year. The auditor of a recognised or registered fund does not need to be based in the BVI.

Regulated mutual funds are also required to file a Mutual Fund Annual Return ("MFAR") within six months of the calendar year end, i.e. on or before June 30th. This return is submitted by a fund's registered office or authorized representative.

Authorized representative

All funds, whether recognised or registered, must appoint an authorized representative in the BVI. It functions as conduit between the fund and the FSC. An authorized representative must hold a certificate issued by the FSC.

Directors

Each private, professional, incubator or approved fund has to appoint at least two directors, of whom at least one needs to be a natural person. Public funds have to appoint at least two natural persons as directors.

SET-UP TIME

It is generally impossible to predict the time-frame for launching a BVI fund and obtaining approval from the FSC. Many factors will play a role, not in the least the drafting of the fund's offering memorandum, the entering into agreements with service providers and the opening of bank and brokerage accounts. It should be noted that the FSC takes a pro-business approach and does its best to keep 'turn around times' limited. In particular, a 'fast track' procedure applies for incubator and approved funds.



HOW CAN CIRCLE PARTNERS HELP YOU?

We are a global, independent fund administrator with over 15 years of experience in fund administration, fund set-up and fund structuring. We offer services from most of the world's major financial jurisdictions. We can provide investment managers with practical advice and assistance in setting up their fund in the British Virgin Islands and introduce them to specialized legal and tax advisers, banks, brokers and auditors.

Our range of services includes:

- advice and assistance in setting-up BVI investment funds;
- on-going corporate and legal support for the fund;
- fund accounting and administration services;
- registrar and transfer agency services; and
- financial, regulatory and tax reporting services.

Our office in the British Virgin Islands has a dedicated team that is focused on delivering a responsive and personalized service and is committed to going the extra mile in satisfying our clients' needs and exceeding their expectations.

Global reach, local expertise and presence

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