

Enhancement to BVI Funds Regime

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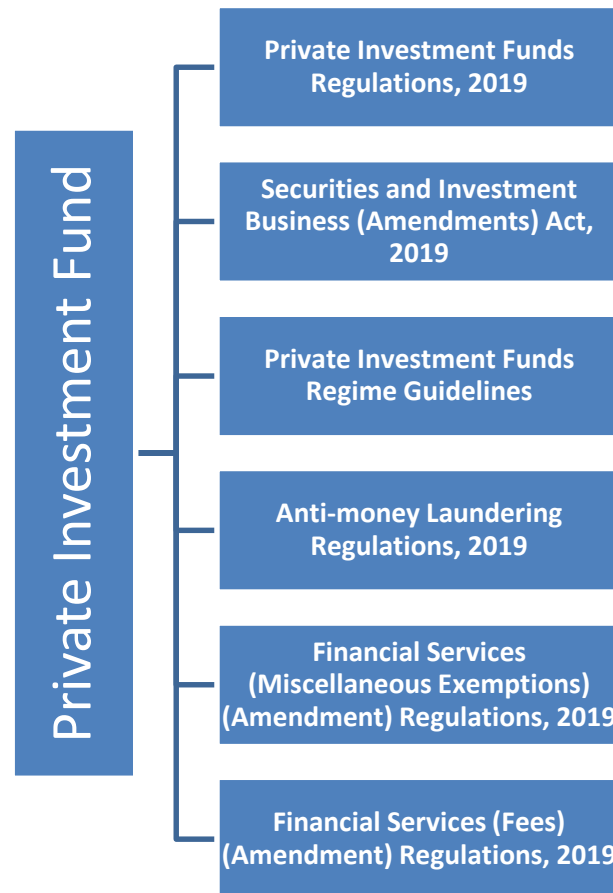


Overview

- Private Investment Fund Regime
- Changes to Existing Fund Regime
 - Private/Professional Funds
 - Incubator/Approved Funds
 - Foreign Funds
 - Public Funds
- Changes to Fund Manager Regime



Enhanced Fund Regime: Legislation and Guidelines



Enhanced Fund Regime: Legislation and Guidelines

- Mutual Funds (Amendment) Regulations, 2019
- Fund Financial Guidelines
- Safekeeping Arrangements Guidelines
- Mutual Funds (Foreign Funds) Regulations, 2019
- Financial Services (Miscellaneous Exemptions) (Amendment) Regulations, 2019



Private Investment Funds: Definition

- Section 63A of SIBA – “private investment fund” means a company, a partnership, a unit trust or any other body that is incorporated, registered, formed or organised, whether under the laws of the Virgin Islands or the laws of any other country, which
 - (a) collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; and
 - (b) issues fund interests, which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, partnership, unit trust or other body.



Private Investment Funds: Qualifications

- Section 63G of SIBA – “No private investment fund shall make any offer or invitation of its fund interests, issue any fund interests or carry on business in any manner that would result in the fund
 - (a) **having more than 50 investors** (*in the case of a fund whose constitutional documents make specifications in accordance with section 63F (2)*);
 - (b) **make any invitation to subscribe for, or purchase, its fund interests otherwise than on a private basis** (*in the case of a fund whose constitutional documents make specifications in accordance with section 63F (2)*); or
 - (c) **issuing fund interests where the initial investment, in respect to a professional investor who is not an exempted investor, is less than the sum prescribed in the Private Investment Funds Regulations** (*in the case of a fund whose constitutional documents makes specifications in accordance with section 63F (2)*),



Private Investment Funds: Qualifications

- An investor falling under section 63F (2) (iii), must provide written confirmation that he or she is a professional investor.
- A professional investor definition is same as a professional investor in relation to a professional fund.



Private Investment Funds: Application Process

Each Applicant must submit



Certificate of incorporation, formation, registration



Constitutional documents (i.e. Memorandum of Articles of Association, Partnership Agreement, Trust Deed)



A Register of Directors (if applicant is a company)



Résumé or biography for each director, general partner, trustee, or underlying individual(s) where director, general partner or trustee is a corporate entity



Offering Document or Term Sheet



Fund valuation policy



Private Investment Funds: Requirements

- Appoint an Authorised Representative;
- Two Directors, a General Partner or Trustee where applicable;
- Offering Document (where issued) or Term Sheet;
- Valuation Policy;
- Prepare and Submit Audited Financial Statements;
- Have Appointed Persons – *i.e.* functionaries who perform the management, valuation, safekeeping functions etc..



Private Investment Fund

- Appointed Persons
 - Can be individual or company
 - Must have relevant expertise and experience
 - Can be same person once relevant safeguards and conflict of interest are in place



Private Investment Funds

- Safekeeping Arrangements
 - Can be satisfied by appointment of traditional custodian/Prime Broker
 - Fund must ensure person appointed is qualified and have sufficient resources
 - Other means are covered under Safekeeping Arrangement Guidelines
 - Investments in Financial Instruments
 - Investments in Tangible Assets
 - Investments in Other Funds



Private Investment Fund: Valuation Policy

- Establishment of Valuation Policy
 - be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
 - be consistent with the provisions concerning valuation contained in its constitutional documents and offering document;
 - require valuations to be undertaken at least on an annual basis;
 - include procedures for preparing reports on the valuation of fund property; and
 - specify the mechanisms in place for disseminating valuation information and reports to investors.
 - fund's manager, or such other person having responsibility for the investment function, is independent from the fund's administrator, or such other person having responsibility for the valuation process.
 - where fund manager or other connected persons are involved in the valuation this should be disclosed to investor and appropriate safeguards are in place to manage conflict.



Private Investment Fund

Financial Statements

Required to be audited	Required to be submitted 6 months after financial year end	Benefits from Exemption and Extension Regimes	Subject to Fund Financial Guidelines
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Private Investment Fund: Financial Statements

- Auditing Standards to be used
 - US Generally Accepted Auditing Standards;
 - International Standards on Auditing (UK);
 - International Standards on Auditing;
 - Hong Kong Standards on Auditing;
 - Canadian Auditing Standards; or
 - such other recognised international auditing standards as may be approved by the Commission on a case by case basis



Private Investment Fund: Fees

Fee Type	Fee
Application Fee	\$700
Annual Fee	\$1000 (currently \$500 in error)
Extension for submitting statements	\$500



Private Investment Fund: AML/CFT

- Subject to full AML/CFT requirements identical to mutual funds
- Now considered relevant business



Private Investment Fund: Guidelines

- Private Investment Funds Regime Guidelines Issued
- Sets out requirements and application process



Private Investment Fund: Processing Time

- Dedicated Team for initial batches of applications
- Estimates range 500-800
- Looking into an Electronic submission mechanism



Private Investment Fund: Processing Time

- Should be completed within same timeframe as private and professional funds
- Benchmarks
 - 24 Hours for initial review
 - 24-48 to send letter on incomplete application
 - 24-48 to process and send certificate on completed application



Mutual Fund Changes:

- Private/Professional
 - Establishment of Valuation Policy
 - Auditing Standards
- Public Fund
 - Auditing Standards



Mutual Fund Changes: Incubator/Approved

- Establishment of Valuation Policy
- Maximum Penalty for failure to pay fees capped at \$2000.
- Requirement to have Safekeeping Arrangements in place



Mutual Fund Changes: Foreign Funds

- Regulations creates a supervisory regime for foreign funds
- Applications must include, inter alia;
 - the regulatory status of the fund
 - the name and address of the fund's Regulatory Authority
 - the name and address of persons in the Virgin Islands that will be responsible for promoting and selling shares in the fund
- Other authorisation requirements similar to Public Funds



Transitional Provisions

- 1 July 2020
 - All existing Private Investment Funds
 - All existing mutual funds
 - All existing Incubator and Approved Funds except in relation to amendment to Regulation 7 to cap the penalties
- 1 April – Regulation 7 of Incubator and Approved Funds Regulations



Fund Management Change

- Section 14A of SIBA now requires that a licensed fund manager and a licensed private investment fund manager shall notify the Commission within 21 days of commencing to act as an investment manager of a mutual fund or a private investment fund, or a fund with equivalent characteristics to a mutual fund or a private investment fund
- A licensed private investment fund manager is a licensee holding a category 3, sub-category E license that provides investment management services to a private investment fund or a fund with equivalent characteristics in another jurisdiction
- Provision comes into force on 1 July 2020



Questions

