

BVI approved managers regime

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The BVI approved manager regime is an attractive 'regulatory light' option for qualifying investment managers and advisors. The application process for approval is generally quick and straightforward making it an appealing and popular option for both start-up and existing qualifying investment managers and advisors.

Who is eligible to act as an approved investment manager (an Approved Manager)?

BVI business companies and BVI limited partnerships who wish to undertake Approved Business (as defined below) are eligible to apply to the BVI Financial Services Commission (the **FSC**) for approval to act as an Approved Manager.

What business may be undertaken by an Approved Manager?

An Approved Manager may act as investment manager or investment advisor to either:

- BVI private or professional funds (as defined under the BVI Securities and Investment Business Act, 2010 (as amended) (**SIBA**)) and their qualifying feeder funds and affiliates with less than US\$400 million assets under management;
- closed-ended funds from either the BVI or a 'recognised jurisdiction'¹, which have the characteristics of a private or professional fund, and their qualifying feeder funds and affiliates with less than US\$1 billion of assets under management; or
- open-ended funds incorporated, formed or organised in a 'recognised jurisdiction' which have equivalent characteristics to a private or professional fund with less than US\$400 million assets under management (together, the **Approved Business**).

The guidelines² to the Investment Business (Approved Managers) Regulations 2012 (as amended) (the **Approved Manager Regulations**) provide that a closed-ended fund or an open-ended fund incorporated, formed or organised in a 'recognised jurisdiction' has the characteristics of:

- a professional fund, if its constitutional documents specify that (a) fund interests will only be issued to 'professional investors'³ or similarly qualified investors for funds in a recognised jurisdiction; and (b)

¹ A list of recognised jurisdictions is set out in the Securities and Investment Business (Recognised Jurisdictions) Notice, 2010 (as amended) (the **Notice**). Please [click here](#) for a link to the Notice.

² Approved Investment Managers Guidelines (as amended) issued by the FSC in 2012.

³ A **professional investor** is defined under SIBA as 'a person (a) whose ordinary business involves, whether for that person's own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property of the fund; or (b) who has signed a declaration that they, whether individually or jointly with their spouse, have net worth in excess of US\$1 million, or its equivalent in another currency, and that they consent to being treated as a professional investor.'

the initial investment of each investor, other than an 'exempted investor'⁴, is not less than US\$100,000 or its equivalent in any other currency; and

- a private fund, if its constitutional documents specify that (a) the fund is not authorised to have more than 50 investors; or (b) the invitation to subscribe for, or purchase fund interests in the fund must be made on a private basis. In this context, a 'private basis' can include making fund interests available to specified persons only or issuing invitations to subscribe on the basis of private or business connections.

Application process

An applicant who wishes to apply to the FSC for approval to act as an Approved Manager (the **Applicant**) must lodge a completed application form and supporting documents with the FSC at least seven days prior to the date it intends to commence Approved Business, unless the FSC accepts a shorter period in writing. The Applicant is then permitted to commence Approved Business for a period of up to 30 days which can be extended for an additional 30 day period either on application to the FSC or at the FSC's own volition. In the event the FSC does not grant approval during this time, the Applicant must cease carrying on Approved Business at the end of the initial or extended period as the case may be.

The application form is straightforward and must be accompanied by the following supporting documents, information and application fee (currently US\$1,200):

- a copy of the Applicant's certificate of incorporation/formation, constitutional documents, register of directors (or general partner(s)) and shareholders (or limited partners);
- the details of each director or general partner and senior officer of the Applicant;
- the details of each person who owns or holds an interest in the Applicant;
- the details of the Applicant's authorised representative;
- a written declaration (in the prescribed form contained in the application form) by the Applicant that each director, general partner, senior officer and each person who holds at least a ten per cent interest in the Applicant (as applicable) is 'fit and proper' in accordance with the Regulatory Code, 2009 (as amended, the **Regulatory Code**);
- a copy résumé or biography for each director, general partner and senior officer of the Applicant;
- the number and details of each fund the Applicant intends to act for upon commencement of Approved Business (each, a **Fund**) (including the name, address and place of incorporation or registration of the Fund);
- a copy of each Fund's certificate of incorporation/formation and offering document (if applicable);
- the date on which the Applicant intends to commence Approved Business;
- a copy of the investment advisory or investment management agreement between the Applicant and each Fund;
- a written confirmation as to which individual(s) will be carrying out the day-to-day investment business functions of the Applicant and a copy résumé or biography of each such individual;
- a written confirmation as to whether or not the Applicant has delegated or intends to delegate any of its Approved Business functions. If so, the application must outline the functions that have been delegated or that the Applicant intends to delegate and provide a copy of the agreement relating to the delegation and provide a copy résumé or biography of each individual to whom the Approved Business functions have been delegated;
- a written confirmation from the Applicant's legal practitioner that the legal practitioner has agreed to act for the Applicant; and

⁴ An **exempted investor** is defined under the Mutual Funds Regulations, 2010 (as amended) as the following persons or entities with respect to a professional fund: '(a) each of the manager, administrator, promoter or underwriter of the fund; (b) any employee of the manager or promoter of the fund; and/or (c) such other class or description of persons as the FSC may, by notice published in the British Virgin Islands Gazette, specify as exempted investors.'

- a written declaration (in the prescribed form contained in the application form) by the Applicant's authorised representative or legal practitioner that the application for approval as an investment manager is complete and meets the application requirements of the Approved Manager Regulations.

The Applicant must also provide to the FSC a copy of its AML/CFT Policies and Procedures Manual (please refer to '*Anti-money laundering (AML)/countering the financing of terrorism (CFT) obligations*' below for more information on an Approved Manager's AML/CFT obligations).

A successful Applicant will be issued with a Certificate of Approval to act as an Approved Manager and registered in the register of approved investment managers by the FSC. The Applicant will then be obliged to pay the initial annual certification fee (currently US\$1,800) at the time of approval. Thereafter, the annual certification fee (currently US\$1,800) will be due on or before 31 March in each year.

Renewal of Approved Manager status and annual fees

Approved Manager status may be renewed annually, subject to (a) payment of the annual certification fee (as described above); and (b) submission of an annual return in the approved form by 31 January in each year.

The annual return is required to:

- state that the Approved Manager is not in breach of the requirements of the Approved Manager Regulations;
- confirm that each director, general partner, senior officer and shareholder holding a 'significant interest' in the Approved Manager is 'fit and proper' in accordance with the Regulatory Code; and
- provide, as at 31 December of the previous year, details of (a) each Fund for which it provides services; (b) the assets under management of each Fund; (c) the number of investors in each Fund; and (d) any significant complaints received by the Approved Manager.

Where the FSC is required or considers it necessary to comply with any reporting obligation, it may require an Approved Manager to provide the FSC with such further information as the FSC may consider fit.

Restrictions on an Approved Manager

An Approved Manager is subject to various restrictions, particularly in relation to the business it undertakes and assets under management.

An Approved Manager may only undertake Approved Business. In the event an Approved Manager manages both open-ended and closed-ended funds, the Approved Manager's aggregated assets under management for open-ended and closed-ended funds shall be segregated and treated separately for the purpose of calculating the statutory limitations on assets under management.

If an Approved Manager ceases to qualify as such under the Approved Manager Regulations, it shall not take on any new business and shall immediately notify the FSC that it is no longer qualified to act as an Approved Manager. It then has a period of three months within which to cease carrying on Approved Business.

In addition, where an Approved Manager has assets under management in excess of the permitted statutory limitations, it must notify the FSC within seven days of exceeding such amount. It shall then cease to qualify as an Approved Manager, unless within three months of the date it ceased to qualify as an Approved Manager:

- its assets under management no longer exceed the statutory limitations;
- it submits an application to obtain a full licence as an investment manager under SIBA; or
- the FSC provides written approval that it may continue to act as an Approved Manager.

On-going obligations of an Approved Manager

Change in information – An Approved Manager must notify the FSC within 14 days of the change of any information submitted with the original application form, providing details of the change and a written declaration as to whether or not the change complies with the requirements of the Approved Manager Regulations. An Approved Manager must also notify the FSC of any matter which has or is likely to have a

'material impact' or a 'significant regulatory impact' on the Approved Manager or the Approved Manager's conduct of Approved Business.

Authorised representative and number of directors – An Approved Manager is at all times required to have a BVI authorised representative and, if it is a corporate entity, at least two directors (at least one of whom must be an individual). In the case of an Approved Manager constituted as a limited partnership, the partnership must, at all times, have at least one general partner.

Financial statements – An Approved Manager is required to prepare unaudited financial statements which comply with prescribed accounting standards and give a fair and true view of the matters to which they relate. Such financial statements must be signed by a director (or general partner, in the case of a partnership) and must be accompanied by a director's certificate and a report on the affairs of the Approved Manager made in respect of the relevant financial year. The financial statements and supporting documents must be submitted to the FSC within six months of the end of the financial year to which they relate. In limited circumstances, it is possible to apply for and obtain an exemption from the requirement to submit financial statements.

Common Reporting Standard (CRS) – An Approved Manager must comply with the BVI regime adopting the CRS, which is a global reporting standard developed by the Organisation for Economic Co-operation and Development to facilitate the automatic exchange of financial information for tax purposes between countries that have adopted the standard. An Approved Manager is usually regarded as a Reporting Financial Institution under the CRS and must therefore comply with relevant reporting obligations. However, in practice this usually entails a registration and an annual filing of a nil return with the BVI International Tax Authority (ITA) where applicable⁵.

Anti-money laundering (AML)/countering the financing of terrorism (CFT) obligations

An Approved Manager must comply with relevant AML legislation, including the requirement to appoint a money laundering reporting officer (**MLRO**) and to notify the FSC of the MLRO's appointment within 14 days of the appointment. The MLRO should be an individual who need not be resident in the BVI or an employee of the Approved Manager but must meet the qualification requirements of the Anti-money Laundering Regulations (as amended, the **AML Regulations**)⁶.

An Approved Manager must maintain appropriate policies and procedures (**AML/CFT Policies and Procedures Manual**) for preventing money laundering, terrorism financing and proliferation financing and relating to sanctions and is required to:

- establish internal controls and carry out risk assessments in accordance with the Anti-money Laundering Code of Practice (as amended, the **AML Code**);
- establish and maintain mechanisms to monitor the implementation of internal controls, including an independent audit function that is adequately resourced to test compliance and implementing enhanced controls where higher risks are identified;
- maintain policies and procedures in keeping with the AML Regulations and the AML Code (including policies and procedures to ensure compliance with sanctions obligations, sanctions screening, monitoring and reporting);
- maintain appropriate records in a format easily accessible to competent authorities should they request them;
- maintain accurate and up to date information on customers and beneficial owners of such customers (where applicable);

⁵ Please refer to the Guidance Notes on the Common Reporting Standards and Requirements of the Legislation implementing the Common Reporting Standards in the Virgin Islands issued by the ITA.

⁶ Under regulation 13(2) of the AML Regulations, these include: (i) holding, at a minimum, a diploma with at least 3 years' post qualification experience, (ii) being fit and proper, (iii) having a broad knowledge of AML/CFT matters and a good appreciation and understanding of BVI AML/CFT laws, and (iv) having the ability to make independent analytical decisions and not being easily susceptible to undue influence. The AML Code further provides that the MLRO must understand the business and be well versed in its transactions/products which could give rise to potential opportunities for money laundering, terrorist financing or proliferation financing.

- be aware of customer due diligence requirements including those relating to relevant sanctions, such as UN sanctions; and
- file suspicious activity and suspicious transaction reports with the BVI Financial Investigation Agency, irrespective of its operational location.

In addition, an Approved Manager is required to submit an annual AML/CFT return⁷ to the FSC by 31 March in each year.

Data protection

An Approved Manager may have access to 'personal data' (as defined in the BVI Data Protection Act, 2021 (the **DPA**)) of its directors and shareholder(s) (or general partner(s) and limited partners, as the case may be, and also likely that of the underlying investors of their managed funds) and may be a data controller for the purposes of the DPA. For further information relating to the DPA and practical considerations for fund managers, please see our guide [BVI data protection: A practical update for funds](#).

Economic substance

The BVI economic substance regime relating to fund management business does not currently impose requirements on Approved Managers to implement economic substance as a result of carrying on their business as such unless they also hold an investment business licence under SIBA to carry out investment management. This means Approved Managers are not usually required to make investment decisions in the BVI.

Contacts

A full list of contacts specialising in BVI law can be found [here](#).

⁷ The AML/CFT return can be accessed via the VIRRGIN online portal [here](#). A helpful User Guide is available [here](#).