

# Continuing obligations for BVI incubator funds

Last reviewed: May 2023

BVI law imposes a number of on-going obligations on BVI regulated funds. The key continuing obligations for BVI incubator funds are summarised below.

## Authorised representative, directors and safekeeping of fund property

An incubator fund must at all times have:

- (a) an authorised representative in the BVI, who is certified to act as an authorised representative by the BVI Financial Services Commission (the **FSC**);
- (b) if the incubator fund is a company, no less than two directors, at least one of whom must be an individual; and
- (c) arrangements in place for the safekeeping of fund property,<sup>1</sup> which include provisions for the appropriate segregation of fund property.

If an incubator fund ceases to meet the requirements at (a) and (b) above, it is required to notify the FSC in writing immediately and take the necessary steps to appoint a replacement within 21 days after the authorised representative or director, as applicable, ceases to hold office<sup>2</sup>.

## Annual fees

An annual fee of US\$1,200 is payable by an incubator fund to the FSC on or before 31 March of each year.

## Fund documents

An incubator fund is required to notify the FSC within 14 days if it makes amendments to:

- its constitutional documents;
- its investment strategy;
- the written warning issued to its investors or potential investors; or
- any other information submitted to the FSC in its application for recognition as an incubator fund.

Such notification must be in writing, providing details of the change and be accompanied by a written declaration as to whether or not the change complies with the requirements of the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 (the **Regulations**).

An incubator fund must also notify the FSC of any matter in relation to the affairs (including the conduct of business) which has, or is likely to have, a material impact on the incubator fund.

<sup>1</sup> **Fund property** means the assets of the fund.

<sup>2</sup> Regulation 9(3)(b) and (4) of the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015.

## Valuation policy

An incubator fund must maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented and ensure that fund property is valued in accordance with the valuation policy. The valuation policy and procedures of an incubator fund must:

- be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
- be consistent with the provisions concerning valuation 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.

The persons controlling the fund's investment function should be independent from the persons controlling the fund's the valuation process, but if a person responsible for the fund's investment function must have an involvement in the valuation of fund property, the fund must:

- identify, manage and monitor any potential conflicts of interest that may arise; and
- disclose to its investors:
  - that the person responsible for the fund's investment function has an involvement in the valuation of fund property; and
  - details of how any potential conflicts of interest will be managed.

## Financial statements and returns

An incubator fund is required to prepare and submit financial statements for each financial year that comply with the following accounting standards:

- the International Financial Reporting Standards, promulgated by the International Accounting Standards Board;
- UK GAAP;
- US GAAP;
- Canadian GAAP; or
- such other recognised standards as may be approved by the FSC on a case by case basis.

An incubator fund must, no later than 31 July and 31 January of each year, prepare and submit to the FSC a semi-annual report for the periods ending 30 June and 31 December respectively, detailing:

- the number of investors in the fund;
- the total investments in the fund;
- the aggregate subscriptions to the fund;
- the aggregate redemptions paid to investors;
- the net asset value of the fund; and
- any significant investor complaint received by the fund and how the complaint was dealt with.

An incubator fund must also, no later than 31 January of each year, file with the FSC a return stating that it is not in breach of the requirements of the Regulations that entitle it to continue as an incubator fund, and provide such other information as may be required in the prescribed form.

## Investors

### Restrictions

Investment in an incubator fund is restricted to:

- (a) sophisticated private investors only;<sup>3</sup>

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<sup>3</sup> A **sophisticated private investor** is a person who is invited to invest in an incubator fund and the amount of their initial investment is not less than US\$20,000.

- (b) a maximum number of 20 investors at any one time;
  - (c) a maximum investment of US\$20,000,000 in net assets or its equivalence in any other currency; and
  - (d) the period of validity of an incubator fund is 2 years (with a possible extension for an additional 12 months upon application to the FSC),
- (together, the **Restrictions**).

If the thresholds listed at (b) and (c) above (the **Thresholds**) are exceeded over a period of two consecutive months, the fund must, within 7 days of the end of the second month:

- (e) notify the FSC in writing and outline the reason(s) for exceeding the Threshold(s); and
- (f) submit an application to the FSC for the conversion and recognition of the fund as
  - (i) a private fund or professional fund in accordance with the provisions of the Securities and Investment Business Act, 2010 (as amended) and the Mutual Funds Regulations, 2010 (as amended); or
  - (ii) an approved fund in accordance with the provisions of the Regulations,unless if, at the time of notification, the incubator fund no longer exceeds the Threshold(s); or
- (g) commence the process of voluntary liquidation of the fund; or
- (h) amend its constitutional documents so as to cease to be a mutual fund and to remove any reference to it being an incubator fund (in which case it shall cease to function as an incubator fund on the date of the filing of the amended constitutional documents or, if there is an effective date in relation to the filing, on the date the filing becomes effective).

Where an incubator fund exceeds the Thresholds, or if the FSC considers it to be in the public interest, the FSC may direct that the fund:

- convert into a private fund, professional fund, or approved fund; or
- take the steps set out at (c) or (d) above.

### Written warning

An incubator fund must provide an investor or potential investor with a written warning before making an offer or invitation to purchase or subscribe for fund interests in an incubator fund. If an incubator fund issues an offering document, the written warning must be included in a prominent place in the offering document. If no offering document is issued, the written warning shall be provided to each investor or potential investor as a separate document.

The written warning must clearly indicate:

- that the incubator fund has been established as such;
- the Restrictions;
- that the fund is not subject to supervision by the FSC and that requirements considered necessary for the protection of investors that apply to public funds do not apply to an incubator fund;
- that an investor in an incubator fund is solely responsible for determining whether the fund is suitable for his or her investment needs; and
- by reason of the above, that investment in an incubator fund may present a greater risk to an investor than investment in a public fund.

### Other regulatory obligations

An incubator fund must also comply with other regulatory requirements including, amongst others, obligations relating to anti-money laundering and countering the financing of terrorism, data protection, automatic exchange of information and economic substance. More detail on these requirements is contained in our guide on BVI open-ended funds which can be found [here](#).

### Contacts

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

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](#). © 2023 MOURANT OZANNES ALL RIGHTS RESERVED