

Continuing obligations for BVI private and professional funds

Last reviewed: May 2023

BVI law imposes several on-going obligations on BVI regulated funds. The main continuing obligations for a BVI private and professional fund incorporated as a company are set out in basic detail below.

1 Authorised Representative, registered agent and registered office

A BVI private or professional fund must at all times have a BVI registered agent and registered office. It must also have an authorised representative, who is certified to act as an authorised representative by the BVI Financial Services Commission (the FSC).

The fund is required to notify the FSC of the appointment of an authorised representative within 14 days after the date of appointment. Similarly, the FSC must be notified within 14 days after the authorised representative ceases to hold office for any reason.

2 Annual Fees

A BVI private or professional fund must pay an annual corporate registry fee and an FSC renewal fee, as follows:

Matter	Time period for FSC notification	Amount
Registry fee	Annually by 31 May or 30 November (depending on when the fund was incorporated)	<ul style="list-style-type: none"> - US\$1,350 if the fund is authorised to issue in excess of 50,000 shares - US\$550 if the fund is authorised to issue less than 50,000 shares
FSC renewal fee	Annually by 31 March	US\$1,200

3 Fund documents

A BVI private or professional fund must notify the FSC of any amendment made to its offering documents, constitutional documents or valuation policy, no more than 14 days after the amendment is made. The FSC must also be notified if the fund issues a new offering document, within 14 days after the document is issued.

4 Directors

A BVI private or professional fund is required on an on-going basis to have at least two directors at all times (one of whom must be an individual). There is no exemption available from this requirement and any breach would require immediate notification to the FSC.

A BVI private or professional fund is required to notify the FSC within 14 days after the date of appointment if it appoints a director or within 14 days after any director ceases to hold office for any reason.

5 Functionaries

A functionary will include a manager, administrator, investment advisor, custodian or prime broker.

A BVI private or professional fund is required on an on-going basis to have:

- a manager
- a custodian; and
- an administrator,

or have obtained an exemption from the requirement to have a manager or custodian. There is no exemption from the requirement to have an administrator.

The above functionaries should be established and located in a 'recognised jurisdiction'¹. The FSC has the discretion to accept a functionary which is not from a 'recognised jurisdiction' if, on application, the fund is able to demonstrate to the FSC's satisfaction, that the functionary's jurisdiction of establishment and location has a system in place for the effective regulation of investment business, including funds.

A BVI private or professional fund is required to provide the FSC with prior notification at least 7 days (or such shorter period as the FSC may accept) before the proposed appointment of a functionary. If a functionary ceases to hold office for any reason, the fund must provide notification to the FSC within 7 days after that functionary ceases to hold office (or such longer period as the FSC may specify), including a statement of the reason for the person ceasing to act as functionary.

6 Anti-money laundering/countering terrorism and proliferation financing

A BVI private or professional fund is required to have a money laundering reporting officer (**MLRO**) but is exempt from the requirement to have a compliance officer. The MLRO does not need to be an employee of the fund or resident in the BVI but should meet the requirements of the BVI Anti-money Laundering Regulations, Revised Edition 2020 (as amended) to perform the functions of a MLRO.

A BVI private or professional fund is required to notify the FSC and the BVI Financial Investigation Agency within 14 days after the appointment of a MLRO. It must also maintain appropriate policies and procedures for preventing money laundering, terrorism financing, proliferation financing and relating to sanctions.²

7 Auditor and financial statements

A BVI private or professional fund is required to have an auditor and file audited financial statements on an annual basis (within six months of the financial year end) or have obtained an exemption from the requirement to do so. The fund is also required to file a 'Mutual Fund Annual Return' with the FSC by 30 June each year.

The FSC must be notified of the appointment of an auditor within 14 days after the date of appointment. The fund must also notify the FSC within 14 days of an auditor ceasing to hold office for any reason.

8 Automatic exchange of information

A BVI private or professional fund is required to register with the BVI International Tax Authority (the **ITA**) for online reporting through the BVI Financial Account Reporting System and submit, annually by 31 May, its CRS and US FATCA reports. A BVI private or professional fund must also implement and maintain written CRS policies and procedures.

9 Investors

A BVI private or professional fund may only accept an investor if that investor has provided prior to the investment:

- in the case of a professional fund, written confirmation that they are a 'professional investor' as defined under the Securities and Investment Business Act, 2010 (as amended, **SIBA**); and
- in the case of both a professional or private fund, written acknowledgment that they have received, understood and accepted the BVI investment warning contained in the offering document.

A **professional investor** under SIBA is any person:

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 In practice, a private or professional fund will usually outsource necessary client identification procedures to its administrator.

- whose ordinary business involves, whether for that person's own account or the accounts 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
- who has signed a declaration that the person, whether individually or jointly with the person's spouse, has a net worth in excess of US\$1,000,000 (or its equivalent in any other currency) and that the person consents to being treated as a professional investor.

10 Place of business

A BVI private or professional fund is required to make a filing with the FSC if there are any changes to its place of business (whether in or outside the BVI) within 14 days after the change.

11 Record keeping

A BVI private or professional fund is required to maintain records that are sufficient:

- to show and explain its transactions;
- at any time, to enable its financial position to be determined with reasonable accuracy;
- to enable it to prepare such financial statements and make such returns as it is required to make under SIBA and the MFR; and
- if applicable, to enable its financial statements to be audited in accordance with SIBA.

Such records must be retained for a period of at least five years after completion of the relevant transaction.

A BVI private or professional fund must also file an annual economic substance declaration with the ITA³ within six months of the end of its relevant financial period.

12 Business of a foreign fund

A foreign fund is required to make a filing with the FSC if there are any material changes to the nature and scope of its business, as soon as reasonably practicable after the change.

Contacts

If you would like more information, a full list of contacts specialising in BVI investment funds can be found [here](#).

³ A private or professional fund's BVI registered agent will submit the declaration through the Beneficial Ownership Secure Search system, provided that the fund has submitted the relevant information to the BVI registered agent and paid its economic substance reporting fee.

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