

Article

The BVI Offers Private Equity and Venture Capital Managers a ‘Lighter Touch’ Regulatory Regime

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The British Virgin Islands (“BVI”) has a regulatory regime which makes it significantly easier for mid-market private equity and venture capital firms to establish investment managers and advisors in the BVI. For investment managers and advisors that qualify, this “approved manager” regime substantially reduces the time and cost of establishing new fund structures and entails significantly less ongoing regulation than is typically the case.

1. Background and Qualifying Criteria

Private equity and venture capital funds themselves are not regulated in the BVI. However, since 2010, investment managers and advisors incorporated in the BVI have generally required an investment business licence under the *Securities and Investment Business Act, 2010* (“SIBA”). The process for obtaining an investment business licence under SIBA is relatively onerous and, upon obtaining such a licence, a manager or advisor is subject to regulation under SIBA and the *BVI Regulatory Code, 2009* (the “Regulatory Code”).

To address such a process, the *Investment Business (Approved Managers) Regulations, 2012* (the “Regulations”) provide a “lighter touch” regulatory regime for BVI investment managers and advisors. To qualify under the regime:

1. the proposed investment manager or advisor must only manage or advise funds with less than US\$1 billion in committed capital; and
2. (in broad summary) the funds which it manages or advises must be restricted to either (a) professional investors, being investors who have a net worth of US\$1 million and who invest a minimum of US\$100,000 in the fund; or (b) a maximum of 50 investors.

Any proposed investment manager or investment advisor that meets these criteria may apply to the BVI Financial Services Commission (the “FSC”) for approval as an “approved investment manager” (an “Approved Manager”) and, if so approved, the Regulations will:

- exempt the Approved Manager from having to obtain an investment business licence under SIBA;

- exempt the Approved Manager from having to comply with the continuing obligations under SIBA and the Regulatory Code; and
- exempt the Approved Manager from having to appoint a compliance officer and maintain a compliance manual.

2. Application Process

The application process under the Regulations is straightforward. A simple application form must be completed and submitted to the FSC together with (i) basic supporting documentation in respect of the manager/advisor and the fund; (ii) a copy of the management, partnership and/or advisory agreement; (iii) a curriculum vitae for each principal, director and senior officer of the manager or advisor; and (iv) a declaration that the principals, directors and senior officers of the manager or advisor satisfy certain “fit and proper” criteria. A BVI lawyer or licensed BVI authorised representative must also submit a declaration confirming the application is complete and meets the application requirements.

Assuming all is in order, it is expected that an application under the Regulations will be approved by the FSC within 10 days. Unless the FSC otherwise objects, the Approved Manager may commence business seven days after submission of the application for a period of 30 days. If the application is not approved within this 30 day period, the FSC can authorise the manager or advisor to continue carrying on business for another 30 days while it completes the approval process.

3. Continuing Obligations

Approved Managers are subject to far fewer continuing obligations than managers and advisors holding an investment

business licence under SIBA. Under the regime, the Approved Manager must:

- file an annual return which (a) confirms it is in compliance with the Regulations and confirms that its principals, directors and senior officers continue to be “fit and proper”; and (b) provides details of its funds under management and whether any significant complaints have been received from investors;
- prepare and submit annual financial statements to the FSC, although there is no requirement for these financial statements to be audited;
- at all times have at least two directors and at all times have a licensed authorised representative in the British Virgin Islands (our affiliated services company, Conyers Client Services, can provide this service); and

- notify the FSC of any change in the information provided in its application form and of any matter which has a material impact on the Approved Manager or the business it carries on.

4. Conclusion

The Approved Manager regime substantially reduces the time and cost of setting up new fund structures and entails a light regulatory touch for managers and advisors. When considered in conjunction with the flexibility of the BVI's corporate and limited partnership laws, the strength of the BVI's commercial court and the BVI's competitive incorporation fees, the regime makes the BVI a highly attractive domicile for mid-market private equity and venture capital firms.

Please do not hesitate to contact us if you would like any further information in relation to any of the above.

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