

A close-up photograph of a hand weaving a textile on a loom. The background is a dark, textured fabric with a complex, repeating pattern. The foreground shows a hand holding a thread, with a red overlay covering the entire image. The word "UNTITLED" is written in large, white, serif capital letters across the center.

# UNTITLED

BVI LEGAL ADVICE

A FIRST GLANCE  
AT THE RECENTLY  
ENACTED BRITISH  
VIRGIN ISLANDS'  
INCUBATOR AND  
APPROVED  
FUNDS REGIME

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# INTRODUCTION

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The Government of the British Virgin Islands (the “BVI”) has recently approved regulations (hereinafter the “Regulations”) that create two new and very interesting fund “products”, namely the **INCUBATOR FUND** and the **APPROVED FUND**. We consider this step is headed in the right direction.

The Regulations, which were made pursuant to the Securities and Investment Business (Amendment) Act 2015 which modified the Securities and Investment Business Act 2010 (“SIBA”), were announced on 18 May 2015 and are expected to be brought into force shortly.

The new regime improves one of the weakest points of SIBA, especially when compared with fund regulations in other jurisdictions popular among emerging managers, such as the Bahamas. We refer to the rather onerous on-going obligations and reporting requirements that every fund (even if it is a small one starting with no seed money) must comply with as well as the number of service providers it involves (i.e. auditors, administrator, custodian, etc.).

By introducing these changes, the BVI enhances its role as a leading offshore financial services jurisdiction and

becomes an even more attractive jurisdiction for start-up emerging managers and those managing funds for small groups of connected investors.

The main advantages of the new types of regulated funds is that their set up and on-going costs are much lower, thus liable to start within two business days of the filing of the application for approval by the Financial Services Commission (the “Commission”). It is important to point out that these funds are regulated and that, as opposed to what happens in other jurisdictions, fund documents need not be lodged with the regulator.

Also, these funds do not require the appointment of various service providers that are mandatory in private or professional funds and the information to be included in the opening documents is significantly reduced.

We strongly believe that with the enactment of the Regulations, the BVI will become an even more competitive fund jurisdiction in attracting new funds, especially from places where clients are more cost-sensitive, as in Latin America.

## THE INCUBATOR FUND

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The Incubator Fund is very useful when a manager does not have seed capital to start a business and it would like to set up quickly and establish a track record with low set-up costs and without having to comply with onerous regulatory obligations. The product is aimed to start-up managers who are seeking the best legal environment to grow their assets under management in the most cost-efficient manner, something that has always been of concern by the BVI regulator.

The Incubator Fund is allowed to operate for up to three years with no service providers (other than the manager) at all as long as it remains within the relevant applicable thresholds:

- > A maximum of twenty investors;
- > A minimum initial investment of US\$20,000 (or its equivalent in another currency) by each investor; and
- > A maximum of US\$20 million in assets (or its equivalent in another currency).

Prior to the end of the above-referred term or upon exceeding any of the specified thresholds for two (2)

consecutive months, the fund must opt for one of the following options:

- > Apply for recognition of the fund as a private fund or professional fund (in which case it will have to prepare an audit demonstrating its financial position and, more importantly, the compliance with the Regulations);
- > Apply to the Commission for approval as an Approved Fund (later commented in this document); or
- > Wind up its operations.

The Approved Fund is aimed at managers who wish to establish a fund for a term longer than the one applicable to the Incubator Fund and whose investors are essentially family and friends. To a certain extent, this type of fund may be considered a more flexible sub-type of the classic “private fund” typical of the British Virgin Islands.

The relevant thresholds in this type of fund are:

- > A maximum of twenty investors at any time (this means that investors can come and go as long as they never exceed twenty); and
- > A maximum of US\$100 million in assets (or its equivalent in another currency).

# THE APPROVED FUND

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The Approved Fund has some features in common with the Private Fund, including the fact that there is no minimum initial investment for the investors. But it differs with the Private Fund in that the Approved Fund is not required to appoint an auditor, nor a manager or a custodian.

The Approved Fund is not subject to any restricted period of time to operate and it may continue to operate throughout its lifetime, unless it is required to convert into a private or a professional fund upon exceeding one of the relevant thresholds.

## ON-GOING OBLIGATIONS

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Once they have been licensed, the on-going regulatory obligations of these types of funds are as follows:

- > notify the Commission within 14 days of any changes of any information provided in the licence application and/or of any matter likely to have a material impact with respect to the fund;
- > have at all times an authorised representative;
- > have at all times at least two directors (one of whom must be an individual);
- > prepare and submit unaudited financial statements; and
- > pay the annual renewal/license fee.

In addition to the above obligations (which apply to both types of funds), an Incubator Fund must submit to the Commission semi-annual returns by 31 July and 31 January, detailing, as at the last business day or the prior calendar month, the following information: (a) number of investors;

(b) total investments of the fund; (c) aggregate subscriptions to the fund; (d) aggregate redemptions paid to investors; (e) net asset value of the fund; and (f) details of any significant investor complaints. The 31 January return should also state that the fund duly complies with the requirements of the Regulations.

Similarly, an Approved Fund must have at all times an administrator and must submit to the Commission an annual return by 31 January including the following information: (a) that the fund is not in breach of the requirements of the Regulations; (b) if there were any significant investor complaints; (c) the number of investors in the fund as of 31 December of the previous calendar year; (d) total investments of the fund; (e) aggregate subscriptions to the fund; (f) aggregate redemptions paid to investors; and (g) the net asset value of the fund.





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