



# UNTITLED

STRATEGIC FIDUCIARY ADVICE

**A FIRST GLANCE  
AT THE RECENTLY  
ENACTED BRITISH  
VIRGIN ISLANDS'  
APPROVED MANAGERS  
REGIME**

# INTRODUCTION

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In what we understand is another step in the right direction, the Government of the British Virgin Islands ("BVI") has recently approved and adopted a special legal framework which provides certain investment funds managers with a much simpler regulatory regime (the "New Regime").

The New Regime improves one of the weakest points of the Securities and Investment Business Act, 2010 ("SIBA"), namely: the rather onerous on-going obligations and reporting requirements that every manager had to comply with (even when providing management services to family funds or small funds).

The situation existing prior to the adoption of the New Regime had, in fact, been a key factor for certain managers to set up their fund structures in the British Virgin Islands, but also to establish their management companies in the Cayman Islands (where managers providing services to sophisticated persons are exempted from registration requirements). We had pointed out this situation in various law articles published by members of our law-firm over the past two (2) years.

Even though obligations under the New Regime are somewhat more cumbersome than those applicable

pursuant to the old Mutual Funds Act of 1996 (as it still requires the appointment of two directors and an authorized representative, plus the preparation and submittal of financial statements), they are definitively lighter when compared to those introduced by the SIBA.

In particular, applicants for an approved manager status must provide a "self-certification" of their directors' "fit and proper" status, and may commence business seven (7) days after filing a short and rather simple application at the Financial Services Commission ("Commission"), pending its formal approval.

On the basis that, neither the Securities and Investment Business (Amendment) Act, 2012 nor the Investment Business (Approved Managers) Regulations, 2012 (the "Regulations") specifically detailed whether (and how) existing licensed managers would be transitioning into the New Regime, we had originally taken the decision to not prepare a memo on these new pieces of legislation until such transition was made clearer.

After hearing from the Commission on this particular and very important issue, we have finally decided to release this guide which includes basic information on the New Regime, hoping you will find useful.

## MAIN CHANGES

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With the introduction of the New Regime, certain eligible investment managers can now elect to be regulated under either the Regulations or under the SIBA, with the main difference being that the managers' regulatory obligations and requirements are less onerous under the Regulations.

### **IN CASE THAT A PARTICULAR ENTITY DOES QUALIFY FOR THIS NEW REGIMEN, THEN THE APPROVAL PROCESS WILL BE AS FOLLOWS:**

- > An application must be submitted to the Commission at least seven (7) days prior to the intended date for the commencement of relevant business, unless the Commission accepts a shorter period in writing; and
- > The application shall, of course, be made in the prescribed form, with the applicant submitting the following documents to the Commission:
  - a copy of the applicant's constitutional documents;
  - brief details and a professional resume of each director (or general partner) and Senior Officer, and every person owning or holding a "significant interest" in the applicant;
  - a written declaration by the applicant stating that each director or general partner and Senior Officer, and each person owning or holding a significant interest in the applicant is "fit and proper";

- details of the funds in relation to which the applicant intends to act upon commencement of "relevant business";
  - a copy of the investment management or advisory agreement to be entered into between the applicant and the relevant fund(s);
  - details of the individuals who will carry out the day-to-day investment business functions of the applicant;
  - details of any person to whom the applicant proposes to delegate any of its investment business functions, along with details of any individuals within the delegate's organization who will be carrying out the delegated function; and
  - a written declaration by the applicant's authorised representative or legal practitioner stating that the application for approval as an approved manager is complete;
- > The application must also include the application fee (US\$1,200); and
- > Where an application is made in this form, then the person to whom the application relates may commence and carry on relevant business for a period of up to thirty (30) days from the date of submission of the application.

# ELEGIBILITY

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To be eligible for recognition as an Approved Manager under the Regulations, the entity must carry on “relevant business”, defined in the Regulations as being an entity acting as an investment manager or advisor to one or more:

- > BVI private or professional funds duly recognized under the SIBA;
- > BVI close-ended funds with similar characteristics as a private or professional fund;
- > Non-BVI funds that invest substantially all of their assets into a BVI private, professional or close-ended fund with the above/ described features;
- > Persons affiliated to a fund structure falling within one of the above referred types; or
- > Such other persons as the Commission may approve on a case-by-case basis.

In addition to the above, an Approved Manager is only permitted to provide “relevant business” to open-ended funds with aggregate assets under management (“AUM”) of US\$400 million or close-ended funds with an aggregate capital commitment of US\$1 billion. When these limits are exceeded, the Approved Manager is required to notify the FSC and –within a 3-month period– either bring the AUM/ capital under the limit, or submit an application to be licensed pursuant to the SIBA.

The reference made in the Regulations to close-ended funds is, in our view, inaccurate. Until now, close-ended funds have always been outside the scope of the SIBA or any other regulations governing investment funds. This is another issue that might need further clarifying by the regulator.

## REGULATORY OBLIGATIONS

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An Approved Manager is required to comply with the following regulatory and reporting requirements:

- > Have a minimum of two (2) directors (at least one of whom should be an individual);
- > Appoint an authorized representative;
- > Notify the FSC with 14-days notice of any changes of its directors or authorized representative;
- > Prepare and submit, to the FSC, unaudited financial statements, a director’s certificate, and a report on the Approved Manager’s affairs within a period of six (6) months of its year end;

- > Prepare and file an annual return, by January 31st each year, in the prescribed form, including:
  - a statement that the Approved Manager is not in breach of the Regulations;
  - confirmation that each director, general partner, senior officer or significant shareholder is fit and proper; and
  - details, as of December 31st of the preceding year, of the AUM of each fund for which they act, the number of investors in each fund, and any significant complaints received; as well as
- > An annual fee of US\$1,800 to be paid to the Commission.

## REGULATORY ADVANTAGES

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### THE MAIN ADVANTAGES WE SEE IN THE NEW REGIME ARE:

- > The quicker licensing process for an investment manager, since the enactment of the SIBA has always been a lengthy one which can take from 4 (four) weeks to 8 (eight) weeks on average but that can take much longer than this;

- > The exemption for approved managers from the requirement to appoint a compliance officer and establish and maintain a compliance officer and establish and maintain a compliance procedures manual; and
- > The exemption for approved managers from the requirement to appoint an auditor or to produce and file audited financial statements.

# TRANSITION

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As we explained above, none of the Regulations specifically details whether or how existing licensed managers -or entities that have applied for a management license- will be able to transition into the New Regime.

**AS WE HAVE DISCUSSED THE ABOVE SITUATIONS WITH THE REGULATOR, WE HAVE CONCLUDED THE FOLLOWING:**

> Under the SIBA, current applicants for investment managers licensing are only required that the applications be withdrawn and an application for approval as an approved manager be submitted as the case may be; and

> Whilst the process for current licensees has yet to be fully defined, cancellations and approvals would have to be simultaneous. Once an entity decides to convert, it will have to comply with the cancellation process and the process of approval as an approved manager. Also, there would have to be a reason why the change is being made, and the entity will have to prove that it meets the approved/person criteria.





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