

A close-up photograph of a shallow, dark-colored bowl filled with dark, glossy berries, possibly blackberries or raspberries. The bowl is resting on a dark, textured surface. The entire image is overlaid with a semi-transparent red filter. The text 'UNTITLED' is centered over the bowl in a large, white, serif font.

UNTITLED

STRATEGIC FIDUCIARY ADVICE

PRIVATE
INVESTMENT
FUNDS

PRIVATE INVESTMENT FUND

On December 31st 2019, the government of the British Virgin Islands ("**BVI**") passed the "Securities and Investment Business (Amendment) Act 2019" and the "Private Investment Fund Regulations 2019" (the "**Law**"), amending 2010's "Securities and Investment Business Act". The aim of this amendment was to regulate the traditional closed-end funds, which are now called "Private Investment Funds" (**PIFs**), which come to coexist with the other five (5) types of funds existing in the jurisdiction.

The main difference between this type of fund and the others is that closed-end funds do not allow redemption of shares or interests at the investor's will.

The Law provides a 6-month transition period for closed-end funds incorporated in BVI before the passage of the Law to comply with it. This being the case, all closed-end investment funds must file their application before the BVI Financial Services Commission (the "**Regulator**") by July 1st, 2020 to obtain the corresponding license.

WHAT KINDS OF FUND WILL BE AFFECTED BY THE NEW LAW?

According to the Law, PIFs are defined as an entity that:

- 1) collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; **and**

- 2) issues fund interests which entitle the holder to receive a proportional amount over the value of the assets of the fund in question.

It is important to highlight that both aspects must concur.

WHAT ARE THE REQUIREMENTS ESTABLISHED BY THE LAW?

The new Law does not depart from the principles established for the other types of investment funds existing in the BVI. In fact, in regulating FIPs, the Law takes features of private funds, professional funds and approved funds.

Some of the most prominent properties of these funds are the following:

- 1) the **Investors** in a FIP must:
 - a) be no more than fifty (50);
 - b) have received on a private basis an invitation to invest; **or**
 - c) qualify as "**professional investors**" and invest, each one of them, a minimum sum of US\$100,000;

- 2) they must have an **authorized representative** before the Regulator;
- 3) they need a **minimum of two (2) directors**, one of whom must be a natural person;
- 4) the following tasks must be carried out by three (3) different persons, who may be the directors, but who must have proven experience in the respective fields:
 - a) fund management;
 - b) valuation of fund assets; and
 - c) safekeeping of fund assets
- 5) an exception may be requested in order to avoid appointing auditors.

WHAT ARE A PIF'S MAIN OBLIGATIONS?

1) Filing audited financial statements within six (6) months after the financial year end; it is possible to request a deadline extension provided reasons are given and a fee is paid.

2) Preparing and filing the term sheet.

3) Notifying any changes related to the place where business is developed, bylaws, fund structure, officials and term sheet. Generally, these notices must be given within seven (7) days after the change.

4) Payment of annual fee.

WHAT IS THE COST OF A NEW LICENSE?

A license to be a recognized PIF costs US\$850.

Once the license has been granted, a US\$1,200 fee must be paid.

As from that moment, the annual renewal fee to maintain the license is US\$1,200.

If you require any further information, please contact martin.litwak@untitled-slc.com or daniela.baldovino@untitled-slc.com.



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