



British Virgin Islands

FUND LEGISLATION

- Mutual Funds Act 1996

NUMBER OF FUNDS

As at 31 December 2008 (the latest available):

Overall:.....2953

NUMBER OF FUNDS BY CATEGORY

As at 31 December 2008:

Private:831

Professional:.....1894

Public:.....228

Only open ended funds are required to be registered or recognised and so no official figures exist for other types of funds.

There is currently no distinction in the licensing process between directly invested hedge funds and fund of hedge funds and so no official figures exist for the break down.

Domiciled and administered fund assets total:

No figures are available currently

Domiciled and administered fund assets by category:

No figures are available currently

REGULATOR

Financial Services Commission of the British Virgin Islands, Investment Business Division.

Contact: Broderick Penn, Director of Investment Business Division; Tel: 284-494-1324 or 284-494-4190; Fax: 284-494-5016

Address: British Virgin Islands Financial Services Commission, Pasea Estate, PO Box 418, Road Town, Tortola, VG 1110, British Virgin Islands.

SERVICE PROVIDERS

Law firms:.....7 multi-jurisdictional firms;approximately 10 other BVI commercial firms;
Administrators:.....87 licensed;
Custodians:.....8 licensed;
Corporate service providers:.....117 licensed;
Accountants/auditors:.....7 international firms;
Trustees:.....98 general trust license holders;
Insolvency Practitioners:.....16 licensed.

Local stock exchange: No

Local fund industry body:

Mutual Fund Practitioners Association

Promotion agency for funds/financial sector:

BVI International Finance Centre

DOUBLE TAXATION TREATIES

None

TAX INFORMATION EXCHANGE AGREEMENTS

UK; USA; Australia; Norway; Finland; Sweden; Denmark; Greenland; Iceland; Faroe Islands; France

ALTERNATIVE FUND, MANAGER AND SERVICE PROVIDER INFORMATION

TYPES OF ALTERNATIVE FUND VEHICLE

Open-ended or closed-ended investment vehicles can be structured as a company, LP, unit trust, common contractual fund, umbrella fund or SPC (open-ended only)

Available types of corporate vehicle:

- Company Limited by Shares, including:
 - Restricted Purposes Company;
 - Segregated Portfolio Company (for recognised or registered funds and licensed insurance companies only);
 - Company Limited by Guarantee authorised to issue shares;
 - Company Limited by Guarantee not authorised to issue shares;
- Unlimited Company authorised to issue shares; and
- Unlimited Company not authorised to issue shares

TYPES OF REGULATORY FUND CATEGORY

Public; Private; Professional

AUDIT REQUIREMENT

- No statutory audit requirement save for registered Public Funds.
- No local audit sign-off requirement.

FINANCIAL STATEMENT REQUIREMENTS

All BVI mutual funds, i.e. all private, professional and public funds recognised or registered under the BVI Mutual Funds Act 1996, must submit a return in a prescribed form to the Financial Services Commission no later than 30 June in each year covering the calendar year ending 31 December of the previous year.

COST OF REGULATORY FEES

Private and Professional:.....US\$350 pa

Public:.....US\$500 pa

OVERALL COST OF FUND ESTABLISHMENT

Private and Professional:From US\$10,000
 plus disbursements for simple fund
 Public:From US\$20,000
plus disbursement for simple fund

REGULATORY APPROVAL TIME

Private and Professional: 3 - 5 days
 Public Fund:6 - 10 weeks

OVERALL ESTABLISHMENT TIME:

Private and Professional: Generally at least 2 weeks
 Public Fund: At least 10 - 14 weeks

The British Virgin Islands

By Harney, Westwood & Riegels

The British Virgin Islands is a leading jurisdiction for the formation of alternative investment funds, having approximately 2,800 funds registered or recognised under the Mutual Funds Act 1996 (the Act), the primary legislation governing the formation and operation of hedge funds in the British Virgin Islands. These funds are regulated by the Financial Services Commission (the Commission), the financial regulator in the British Virgin Islands, which was established by and whose powers primarily originate from the Financial Services Commission Act 2001.

The Act requires all investment funds falling within its definition of "mutual fund" to be recognised or registered with the Commission.

The Act further requires all managers and administrators of mutual funds to be licensed where the manager or administrator is incorporated in or carries on its business from the British Virgin Islands.

The Act defines a "mutual fund" as a company incorporated, a partnership formed, a unit trust organised or other similar body formed or organised under the laws of the British Virgin Islands or of any other country or jurisdiction which:

- a) collects and pools investor funds for the purpose of collective investment; and
- b) issues shares (defined as shares in the share capital of a company, an interest in a mutual fund partnership and a unit in a mutual fund unit trust) that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company,

the partnership, the unit trust or other similar body, as the case may be; and includes:

- i) an umbrella fund whose shares are split into a number of different class funds or sub-funds, and
- ii) a fund which has a single investor which is a mutual fund not registered or recognised under the Act.

Fund Vehicles

Sponsors and fund managers considering setting up investment funds in the British Virgin Islands may choose from the following range of possible vehicles:

- a BVI Business Company.
- a Limited Partnership.
- a Unit Trust.

The vast majority of British Virgin Islands investment funds are set up as companies limited by shares under the BVI Business Companies Act, 2004.

Categories of Fund

The three categories of regulated fund that are most commonly used are as follows:

- a **private fund**, which is a mutual fund whose constitutional documents specify that it will have no more than 50 investors or that the making of an invitation to subscribe for or purchase shares is made on a private basis;
- a **professional fund**, which is a mutual fund the shares in which are only made available to professional investors and the initial investment by a majority of the investors is not less than US\$100,000 (or equivalent); and

- a **public fund**, which is a mutual fund that is neither a private fund nor a professional fund.

Private funds must be recognised before they carry on business or manage or administer their affairs in or from within the British Virgin Islands. Private funds are currently not required to have their accounts audited or filed with the Commission.

Professional funds may carry on business or manage or administer their affairs for a period of up to 14 days without being recognised under the Act. Policy Guidelines suggest that a fund will be regarded as having commenced its business when a prospectus, or other document the purpose of which is to make an invitation to purchase or subscribe for shares of the fund, is published. Professional funds are currently not required to have their accounts audited or filed with the Commission.

Public funds must be registered before they carry on business. Public funds may not make an invitation to the public or any section of the public to purchase shares unless prior to such invitation they publish in writing a prospectus, approved by and signed on behalf of the fund's directors or similar governing body, and file a copy of that prospectus with the Commission.

A public fund is required to have a custodian who is functionally independent of the fund's manager or administrator and must also maintain adequate accounting records and prepare audited financial statements in respect of each financial year and keep such accounting records and financial statements available for examination by the Commission, any authorised person and all investors.

No restrictions on Strategy

There are no restrictions on the strategy a fund may pursue, provided it is not otherwise in breach of the laws of the British Virgin Islands, no limits on leverage taken by the funds and no rules imposed on funds as to how they value their assets.

Fund Annual Returns

All private, professional and public funds must submit a return to the Commission no later than 30 June in each year. The return requires funds to make disclosures to the Commission about their basic prudential and governance information and summary financial information including details of its asset allocation. The return does not require any information on the identity of investors or the specific investments within the fund's portfolio. The period which must be covered in the return relates to the calendar year ending 31 December of the previous year.

Public Fund Prospectus Requirements

Registered public funds are required to have a prospectus, which must be filed with the Commission. Every prospectus is required to provide full and accurate disclosure of all information as investors would reasonably require and expect to find for the purpose of making an informed investment decision. An investor in a public fund has a statutory right of action for rescission or damages in respect of any misrepresentation (which includes an omission to disclose required information) contained in the fund's prospectus.

Where the required information ceases to be accurate in a material particular, the fund must publish an amendment to the prospectus within fourteen days of the change occurring and file the same with the Commission.

Directors

The Commission requires that every public fund that is a company have at least 2 individuals as directors. In addition, the Commission has expressed a preference that all corporate private and professional funds seeking recognition have at least 2 individuals as directors of those funds.

Location of Functionaries

The Commission requires a fund wishing to be recognised or registered to submit an application which must include evidence of the fund's status together with details of each of the fund's functionaries (being the investment manager, investment advisor, administrator and custodian).

In considering an application for recognition or registration, the Commission has issued Policy Guidelines which require that the manager, investment advisor, administrator and custodian of a British Virgin Islands mutual fund be incorporated in either the British Virgin Islands, or a "recognised jurisdiction", which, for the purposes of the Mutual Funds Act, are currently as follows:

Australia	Italy
Bahamas	Japan
Belgium	Jersey
Bermuda	Luxembourg
Canada	Malta
Cayman Islands	Netherlands
France	Singapore
Germany	Spain
Gibraltar	Sweden
Guernsey	Switzerland
Hong Kong	United Kingdom
Ireland	USA
Isle of Man	

However, the Policy Guidelines also indicate that functionaries incorporated in other jurisdictions may be acceptable if the jurisdiction is regarded by the

Commission as having a prudent system of regulation and supervision of mutual funds business.

Manager's and Administrator's Licenses

An application for an administrator's or a manager's license must include a statement of the financial and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business. A licence will not be granted unless the Commission is satisfied that the applicant

- a) is a fit and proper person to be engaged in the business proposed;
- b) has available adequate knowledge, expertise, resources and facilities necessary for the nature and scope of the business proposed; and
- c) has appointed an auditor satisfying such conditions as may be prescribed by the Commission.

AML

All funds, managers and administrators must comply with the Anti-Money Laundering regulations of the British Virgin Islands.

Tax

British Virgin Islands based funds, managers and administrators are not required to pay any income taxes to the British Virgin Islands Government under the British Virgin Islands Income Tax Act. Furthermore, the investors in such entities will not have to pay any British Virgin Islands income taxes or capital gains taxes on payments those investors receive. Provided the entity has no employee in the British Virgin Islands, it will have no liability to British Virgin Islands payroll taxes.

Capital gains realized with respect to any shares of a fund are exempt from income tax in the British Virgin Islands and there are no estate, inheritance, succession or gift taxes payable in the British Virgin Islands with respect to any shares of a fund. ■



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