

THE NEXT FRONTIER: BVI INTRODUCES NEW FUND PRODUCTS

Philip Graham, partner with Harneys, British Virgin Islands discusses the latest development in fund vehicles available in the BVI



Philip Graham

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The British Virgin Islands, in continuing to establish itself as a premier offshore financial services jurisdiction, has created two new fund products to complement its very popular existing funds offering with the bold intention of remaining on the cutting edge of the financial services market.

The 'incubator fund' and the 'approved fund' are two new lightly regulated fund products which are primarily aimed at start-up emerging managers and those managing funds for smaller groups of closely connected investors.

The new legislation that governs these products is the Securities and Investment Business (Incubator and Approved Funds) Regulations 2015 (the Regulations). The Regulations are made pursuant to the Securities and Investment Business (Amendment) Act 2015 which amends the Securities and Investment Business Act 2010 (SIBA). The Regulations came into force on 1 June 2015.

THE INCUBATOR FUND

The incubator fund is aimed at managers who do not necessarily have the benefit of seed investor capital but who wish to set up quickly and establish a track record with minimal set-up costs and without having to comply with onerous regulatory obligations. The product is therefore expected to be very attractive to start-up managers who are seeking the best environment to grow their assets under management in the most cost-efficient manner.

Under the Regulations, the incubator fund is permitted to operate for two years (with the possibility of one additional year) with no functionaries (i.e. administrator, custodian or manager) and no requirement to appoint an auditor. However, this level of flexibility is contingent upon the fund remaining within the relevant thresholds applicable to the fund at all times. These thresholds are:

- A maximum of 20 investors;
- A minimum initial investment of \$20,000 by each investor; and
- A cap of \$20m on the value of the net assets of the fund.

Prior to the end of the two or three-year term (as applicable) or upon exceeding any of the specified thresholds, the fund must elect one of the following options:

- Apply for recognition of the fund as a private fund or professional fund by preparing, amongst other things, an audit demonstrating its current financial position and compli-



ance with the Regulations and submitting the application to the Financial Services Commission of the British Virgin Islands (the Commission);

- Apply to the Commission for approval as an approved fund; or
- Wind up its operations.

THE APPROVED FUND

The approved fund is aimed at managers who wish to establish a fund for a longer term, but on the basis of a more



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private investor offering, which may appeal to family offices or an investor base of close connections.

It also has relevant thresholds:

- A maximum of 20 investors at any one time; and
- A cap of \$100m on the value of the net assets of the fund.

It has similar characteristics to the long-standing private fund recognised under SIBA including no minimum initial investment for the investors, but unlike the private fund, the approved fund is not required to appoint an auditor, a manager or a custodian. However, to ensure there is some suitable oversight of the operations of the fund, it is required to appoint an administrator which will be reassuring to potential investors.

Unlike the incubator fund, the approved fund does not have a restricted validity period and can continue to operate as an approved fund for the full duration of its lifetime, unless:

- A decision is made to voluntarily apply to the Commission to recognise the fund as a private or professional fund;
- It is required to convert into a private or professional fund upon exceeding one of the relevant thresholds; or
- It elects to wind up its operations.

TIME TO MARKET AND REDUCED COSTS

Recognising the importance of time to market, both of these new fund products have been provided the further flexibility of being able to commence trading within two

business days of lodging a completed application for approval with the Commission.

It is anticipated that the legal costs will be lower than those associated with setting up a private or professional fund, largely because the mandatory information to be contained in the offering documents of these funds, as specified by the Regulations, is greatly reduced, thereby allowing these funds to use short-form term sheets where appropriate.

When you combine this cost saving, together with the option to only appoint the service providers that the manager strictly believes the fund requires, the new regime will provide significant cost savings to an investment manager of one of these funds.

The new products and the Regulations are a welcome addition to the BVI investment funds landscape and will further refine the British Virgin Islands' reputation as a flexible, innovative, attractive and cost-effective jurisdiction for new fund launches.

Coupled with the recently introduced 'light touch' approved manager product, the British Virgin Islands has now introduced the next frontier in the investment funds market. ■

Philip Graham is a senior editor of The Offshore Funds Blog, a Harneys blog dedicated to explaining how offshore funds work and why investment managers use them.