

Guide to the British Virgin Islands Approved Manager Regime

This guide provides an overview of the British Virgin Islands' Approved Manager regime. The regime came into effect on 10 December 2012 with the Investment Business (Approved Managers) Regulations 2012 (the **Regulations**) and the Approved Investment Managers Guidelines (the **Guidelines**) coming into force and was supplemented by the Investment Business (Approved Managers)(Amendment) Regulations 2013. It introduces a less onerous regulatory regime for BVI domiciled investment managers and investment advisers and compliments the more heavily regulated investment business licensing regime under Part I of the Securities and Investment Business Act 2010 (**SIBA**).

The key features of the new regime are:

- For eligible managers and advisers, an alternative to licensing under Part I of SIBA
- The applicant must be a BVI company or limited partnership
- Application form provides for self-certification of "fit and proper" status of the applicant
- The approved manager can commence business seven days after filing a short and simple application with the Financial Services Commission (the Commission) pending formal approval
- The approved manager can act as manager or advisor to any number of incubator, approved, private or professional funds recognised under SIBA, as well as funds domiciled outside of the BVI in a Recognised Jurisdiction (as defined below) and closed ended funds domiciled in the BVI or in a Recognised Jurisdiction, if they have the key characteristics of a private or professional fund
- The approved manager is subject to caps of (i) aggregate assets under management of US\$400 million for open ended funds and (ii) aggregate capital commitments of US\$1 billion for closed ended funds
- Annual return and unaudited financial statements to be filed with the Commission
- No capital adequacy or professional indemnity insurance requirements and no requirement to appoint a compliance officer. The Regulatory Code does not apply

At this point in time, a **Recognised Jurisdiction** for these purposes means:

Argentina, Australia, Bahamas, Bermuda, Belgium, Brazil, Canada, Cayman Islands, Chile, China, Curacao, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Ireland, Isle of Man, Italy, Japan, Jersey, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, Portugal, Singapore, Spain, South Africa, Sweden, Switzerland, United Kingdom and the United States of America.

Criteria for approved managers

An approved manager may carry on business (defined as "relevant business" in the Regulations) as an investment manager or investment adviser to:

- a) One or more incubator, approved, private or professional funds recognised under SIBA (or funds domiciled outside the BVI but in a Recognised Jurisdiction)
- b) One or more closed ended funds which are domiciled in the BVI and have certain key characteristics of a private or professional fund
- c) One or more open ended or closed ended funds which are domiciled in a Recognised Jurisdiction and have certain characteristics of a private or professional fund
- d) One or more non-BVI funds (open ended or closed ended) investing a substantial part of its assets in a fund described in (a), (b) or (c) above
- e) One or more persons who are affiliated (as defined in the Guidelines) to a fund described in (a) or (b) above, and
- f) Such other person(s) as the Commission may approve on a case by case basis (the most common application under this section being for the purposes of providing some form of management advice to “managed accounts”)

“significant interest” shall have the meaning ascribed to it in SIBA – broadly speaking a ten per cent or greater interest)

- a) Details of the funds that the applicant intends to act for upon commencement of “relevant business” (including total assets or, for new funds, target size) and a copy of the investment management or advisory agreement to be entered into between the applicant and the relevant fund(s)
- b) Details of the individuals who will carry out the day-to-day investment business functions of the applicant
- c) Details of any person to whom the applicant proposes to delegate any of its investment business functions together with details of any individuals within the delegate’s organisation who will be carrying out the delegated function
- d) A resume or curriculum vitae for each director and senior officer of the applicant as well as each individual mentioned in paragraphs (e) and (f) above
- e) A written declaration by the applicant’s authorised representative or legal practitioner that the application for approval as an approved manager is complete

Application process – timeframe

An applicant must submit its application in the prescribed form to the Commission at least seven days prior to the intended date of commencement of the “relevant business”. After the expiry of the seven day period (or such shorter period as the Commission may approve), the applicant may commence and carry on “relevant business” for a period of up to 30 days (such period being extendable for a further period of 30 days by the Commission). During this 30 day (or extended) period, the applicant will be deemed to have been approved under the Regulations.

Should the Commission not grant approval to an applicant or reject the application, the applicant is required to cease carrying on the “relevant business”.

Application process – documentation

The applicant must submit an application to the Commission using the prescribed form and provide the following:

- a) A copy of the applicant’s constitutional documents
- b) Brief details of each director or general partner and senior officer of, and each person who owns or holds an interest in, the applicant
- c) A written declaration by the applicant that each director or general partner and senior officer and each person who owns or holds a “significant interest” in the applicant is “fit and proper” in accordance with Schedule 1A of the Regulatory Code (for these purposes

The application must also include the application fee of US\$1,000.

Limits on assets under management of approved managers
A key feature of the new regime is that the approved manager is subject to a limit on the size of the funds which it manages or advises. Open ended funds cannot exceed an aggregate of US\$400 million assets under management and closed ended funds cannot exceed US\$1 billion of capital commitments. If the limits are exceeded, the approved manager must inform the Commission within seven days. Within three months of the limit being breached, the approved manager must either have submitted an application for a licence under Part I of SIBA or the funds which it manages or advises must have decreased back below the limits otherwise it must immediately cease carrying on relevant business on the expiry of the three month period.

Ongoing obligations of an approved manager

An approved manager must:

- Have an authorised representative (certified under section 64 of SIBA) and at least two directors (one of whom is an individual) at all times
- Notify the Commission of any change to the information provided by the approved manager in connection with its application within 14 days of such change occurring

- Submit financial statements (which do not need to be audited), a director's certificate and a report on the affairs of the approved manager to the Commission within six months of the end of each financial year
- Submit an annual return to the Commission by 31 January each year. The information to be provided in the annual return must include:
 - a statement that the approved manager is not in breach of the Regulations
 - confirmation that each director, general partner and senior officer of, and shareholder with a significant interest in, the approved manager is fit and proper
 - details, as at the 31 day of December of the preceding year, of the assets under management of each fund for which it acts, the number of investors in each fund; and any "significant complaints" received by the approved manager

Pay an annual fee of US\$1,500 to the Commission for renewal of its approval as an approved manager.



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