

# Continuing obligations for private and professional funds

As a recognised fund, your professional or private fund is regulated by the BVI Financial Services Commission (the **FSC**). This note provides a quick reference to your professional or private fund’s ongoing BVI obligations.

Professional and private funds are recognised under the Securities and Investment Business Act 2010 and are subject to the Mutual Funds Regulations 2010.

## The board and officers

A professional or private fund must:

- At all times have at least two directors, at least one of whom must be an individual
- Appoint an officer of the fund or another individual as Money Laundering Reporting Officer (**MLRO**) for the fund who may, in practice, be a director of the fund itself or a person provided by one of the functionaries to the fund (see below for more detail on anti-money laundering obligations)
- Appoint a FATCA Responsible Officer (see below for more detail on obligations under FATCA)

## Functionaries and other service providers

A private or professional fund is required to have the following functionaries and other service providers:

Service Provider	Requirement	Is an exemption available?
<b>Manager</b>	A private or professional fund must at all times have a manager	Yes, in certain circumstances, on application to the FSC
<b>Administrator</b>	A private or professional fund must at all times have an administrator	No exemption is available
<b>Custodian</b>	A private or professional fund must at all times have a custodian. The custodian must be functionally independent from the manager and administrator	Yes, in certain circumstances, on application to the FSC  The most common exemptions are for feeder funds in a “master-feeder” structure and for funds whose prime broker provides the custodial services

Service Provider	Requirement	Is an exemption available?
Auditor	A private or professional fund must appoint and at all times have an auditor to audit its financial statements	Yes, in certain circumstances, on application to the FSC
Authorised Representative	A private or professional fund must have an authorised representative to act as a point of contact between the fund and the FSC. The persons appointed must be licensed by the FSC to act as an authorised representative	No exemption is available

## Notice requirements

On the happening of certain events, a professional or private fund is required to notify the FSC. The table below summarises these notification requirements and the timeframe for providing notice.

Event triggering an obligation to notify the FSC	Time frame
The appointment of a <i>functionary</i> (ie the manager, administrator, investment advisor, custodian, any prime broker or (in the case of a unit trust) the trustee)	Not less than <b>7 days prior</b> to the date of appointment
A functionary ceasing to act (notice must include a statement of the reasons for such functionary ceasing to act)	Within 7 days
The appointment of a director	Within 14 days
A director ceasing to hold office (for whatever reason)	Within 14 days
The appointment of an authorised representative	Within 14 days
An authorised representative ceasing to hold office (for whatever reason)	Within 14 days
The appointment of an auditor	Within 14 days
An auditor ceasing to hold office (for whatever reason)	Within 14 days
Any change in the address of the fund's place of business, whether in or outside the BVI	Within 14 days

Event triggering an obligation to notify the FSC	Time frame
Any amendment to its constitutional documents	Within 14 days
The issuance of any offering document not previously provided to the FSC	Within 14 days
The amendment of any offering document previously provided to the FSC	Within 14 days

## Annual regulatory and government requirements

There are various reporting and payment deadlines for a professional or private fund throughout the year.

Due by date	Action
31 March	Pay recognition fee of US\$1,200 to the FSC. Failure to pay may attract administrative penalties and/or other enforcement action
30 April	For funds that are limited partnerships, pay the Registry licence fee of US\$750
31 May	FATCA reporting deadline (from 2016) and CRS reporting deadline (from 2017)
31 May	For funds that are companies incorporated from 1 January to 30 June, pay the Registry licence fee*
30 June	File Mutual Fund Annual Return in respect of previous year ending 31 December
By the date six months after the end of its financial year (30 June assuming financial year end is 31 December)	Provide a copy of the fund's audited financial statements to the FSC. An extension of up to 9 months or 15 months in exceptional circumstances may be requested

Due by date	Action
30 November	For funds that are companies incorporated from 1 July to 31 December, pay the Registry licence fee*

\*US\$550 for companies authorised to issue up to 50,000 shares and US\$1,350 for companies authorised to issue more than 50,000 shares.

## Maintenance of records and financial statements

A private or professional fund must maintain records that are sufficient to show and explain its transactions, to enable its financial position to be determined with reasonable accuracy at any time, to enable it to prepare financial statements and make returns and, if applicable, to enable its financial statements to be audited

A private or professional fund must prepare financial statements for each financial year that comply with:

- The International Financial Reporting Standards, promulgated by the International Accounting Standards Board
- UK GAAP
- US GAAP
- Canadian GAAP; or
- Internationally recognised and generally accepted accounting standards equivalent to the accounting standards referred to above

## Fund policies and arrangements

The Fund is required to maintain a valuation policy setting out the applicable procedures for the valuation of fund property, the preparation of reports on the valuation and setting out the mechanisms for sharing valuation information with investors (**Valuation Policy**). On an annual basis, the Fund should review its Valuation Policy to ensure compliance with BVI legislation.

## Anti-money laundering obligations

The BVI anti-money laundering (**AML**) regime applies to all funds as they are classified as “relevant persons” under the Anti-Money Laundering Regulations 2008. In addition to appointing an officer to the fund or another individual as MLRO (as mentioned above), a fund will be required to:

- Put in place investor on-boarding procedures which address typical “know your client” requirements
- Report suspicious transactions to the BVI Financial Investigation Agency
- Put in place and maintain a written and effective system of internal controls which provides appropriate policies, processes and procedures for forestalling and preventing money laundering and countering the financing of terrorism (the **Manual**). The Manual should be reviewed annually to ensure compliance with AML regime in the British Virgin Islands.

The BVI rules do provide for funds to outsource all and any of these obligations to functionaries based outside of the BVI, such as an administrator or investment manager. Any outsourcing must, however, be documented in writing.

## Obligations under FATCA and CRS?

Private and professional funds are required to register for a Global Intermediary Identification Number (**GIIN**) with the US Internal Revenue Service (**IRS**). Funds are also required to enroll with the BVI International Tax Authority (**ITA**). Enrolment.

for FATCA reporting is made through the ITA's online portal, called BVI Financial Account Reporting System, and for CRS is made by email to [bvifars@gov.vg](mailto:bvifars@gov.vg).

Private and professional funds will need to identify reportable accounts and start to report the necessary information to the ITA. The reporting deadline for US FATCA, UK FATCA and CRS is 31 May. US FATCA reporting started in 2015, UK FATCA reporting started in 2016 and CRS reporting started in 2017.

The information that must be reported under US and UK FATCA and CRS is broadly similar and includes: the name, date of birth, tax identification number or (**TIN**) (For Specified US Persons where available); National Insurance Number (for Specified UK Persons, where available); jurisdiction of residence (for reportable persons under CRS only); the account number; name and GIIN of the reporting financial institution; and the account balance (some minimums apply under FATCA).



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