

Continuing obligations for incubator funds

As a mutual fund, your incubator fund is regulated by the British Virgin Islands (**BVI**) Financial Services Commission (the **FSC**). This note provides a quick reference to your incubator fund's ongoing BVI obligations.

Incubator funds are governed by the Securities and Investment Business (Incubator and Approved Funds) Regulations, Revised Edition 2020 (the **Regulations**) and the Incubator and Approved Funds Guidelines.

The board and officers

An incubator fund must:

- At all times have at least two directors, at least one of whom must be an individual
- Appoint an appropriately qualified and independent individual as Money Laundering Reporting Officer (**MLRO**) for the fund who may, in practice, be a person provided by one of the functionaries to the fund (see below for more detail on anti-money laundering obligations)
- Appoint a Foreign Account Tax Compliance Act (**FATCA**) Responsible Officer and a principal point of contact for the BVI International Tax Authority (**ITA**)(see below for more detail on obligations under FATCA and CRS)

Functionaries and other service providers

An incubator fund is required to have an FSC licenced authorised representative (**Authorised Representative**) at all times to act as a point of contact between the fund and the FSC.

This is a service offered by our strategic alliance partner, Craigmuir Authorised Representative Limited.

It is not required to have any other functionaries or service providers, although it is free to appoint them should it wish to.

Notice requirements

On the happening of certain events, an incubator 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
An Authorised Representative ceasing to hold office (for whatever reason)	Immediately
Any change to the information provided to the FSC with the application ie: ▪ change of Authorised Representative; ▪ change of director or general partner or to any details provided in relation to a director or general partner; ▪ amendment to constitutional documents; ▪ amendment to offering document (if applicable); and/or ▪ change to investment warning and/or description of investment strategy (where there is no offering document)	Within 14 days
Total number of investors exceeds the threshold for two consecutive months	Within 7 days of the end of the second month

Maximum value of the fund's assets exceeds the threshold for two consecutive months	Within 7 days of the end of the second month
Any matter related to the conduct of the business activities of the fund which may have a material impact on the fund (for example a suspension of subscriptions or redemptions or becoming subject to legal or regulatory proceedings)	Immediately
Number of directors falls below two (for whatever reason)	Immediately

Notices in relation to an incubator fund's validity period

The initial period of validity of an incubator fund is two years. If an incubator fund wishes to extend its period of validity for a period not exceeding 12 months, it must submit a written application to the FSC requesting the extension at least one month prior to the end of its period of validity (or such shorter period as the FSC may approve).

If an incubator fund wishes to continue to operate after the end of the validity period, it must submit to the FSC an application to convert into a private, professional or approved fund at least two months prior to the expiry of the validity period (or such shorter period as the FSC may approve).

If the incubator fund is applying to convert to a private or professional fund, it must also prepare and submit to the FSC an audit of its current financial position and compliance with the requirements of the Regulations at least two months prior to the expiry of the period of validity.

Annual regulatory and government requirements

There are various reporting and payment deadlines for an incubator fund throughout the year.

Due by date	Action
31 January	File semi-annual return in respect of previous six months with the FSC
31 January	Submit a statement that the fund is not in breach of the requirements of the Regulations
31 March	Pay approval 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 licence fee of US\$750 to the Registrar of Limited Partnerships (together with the Registrar of Corporate Affairs, the Registry)
31 May	FATCA reporting deadline and Common Reporting Standard (CRS) reporting deadline
31 May	For funds that are companies incorporated from 1 January to 30 June, pay the Registry licence fee*
1 June	Pay annual enrolment fee of US\$185 to the ITA through the ITA's online portal
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 financial statements (which do not need to be audited) to the FSC Submit (via the BVI registered agent) an economic substance return to the ITA (this will confirm that the fund does not carry on any "relevant activity" in the BVI)
31 July	File semi-annual return in respect of previous six months with the FSC
30 September	CRS additional information form filing deadline
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.

Reporting and financial statements

An incubator fund is required to prepare and submit the following to the FSC:

- Financial statements, which do not need to be audited but are required to be approved or signed by a director or the general partner of the fund, within six months of the end of the financial year to which they relate
- A semi-annual return, no later than 31 January and 31 July containing the following information as at 31 December of and 30 June of the preceding semi-annual period:
 - the number of investors in the fund
 - the total investments in the fund
 - the aggregate subscriptions to the fund
 - the aggregate redemptions paid to investors
 - the net asset value of the fund
 - any significant investor complaint received by the fund and how the complaint was dealt with
- A statement that the fund is not in breach of the requirements of the Regulations that allow it to continue as an incubator fund, no later than 31 January (such statement is included in the semi-annual return)

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, Revised Edition 2020. In addition to appointing an appropriately qualified and independent 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
- 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 BVI
- Report suspicious transactions to the Financial Investigation Agency (**FIA**) in the BVI
- Report the identity of its appointed MLRO to the FIA Agency

The BVI rules do provide for funds to outsource all and any of these obligations to functionaries based outside of the BVI. If the incubator fund has an administrator and/or investment manager, it may consider doing this. Any outsourcing must, however, be documented in writing.

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**). The Fund is also required to have a safekeeping policy and have adequate arrangements in place for the safekeeping of fund property (**Safekeeping Policy**).

On an annual basis, the Fund should review its Valuation Policy and Safekeeping Policy to ensure compliance with BVI legislation.

Obligations under FATCA and CRS

Incubator funds are required to register for a Global Intermediary Identification Number (**GIIN**) with the US Internal Revenue Service. Funds are also required to enrol with the ITA. Enrolment for FATCA and CRS reporting is made through the ITA's online portal, called the BVI "Financial Account Reporting System". Funds must also pay an annual enrolment fee of US\$185 to the ITA through the ITA's online portal.

Incubator funds will need to identify reportable accounts and start to report the necessary information to the ITA. The reporting deadline for FATCA and CRS is 31 May.

The information that must be reported under FATCA and CRS is broadly similar and includes: the name, date of birth, tax identification number (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).

A CRS additional information form must also be filed via the ITA's online portal by 30 September.

Beneficial ownership regime

The BVI Business Companies (Amendment) Act 2024 and the BVI Business Companies and Limited Partnerships (Beneficial Ownership) Regulations 2024 introduced a requirement for BVI business companies and limited partnerships to file beneficial ownership information with the Registry via the Registry's online filing system "VIRRGIN".

Incubator funds are exempt from the requirement to file beneficial ownership information with the Registry, provided that the fund's beneficial ownership information can be provided to the Registry within 24 hours of request by the fund's Authorised Representative (or another person licensed by the FSC that has a physical presence in the BVI).

Where an incubator fund qualifies for the exemption, its BVI registered agent must still submit an exemption filing on behalf of the fund via the Registry's online filing system "VIRRGIN".



For more information and key contacts please visit [harneys.com](https://www.harneys.com)