

Continuing obligations for BVI incubator funds

As a mutual fund, your incubator fund is regulated by the 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 2015 (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 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 (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

An incubator fund is required to have a BVI 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 associated services business, 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	Within 14 days

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)

Total number of investors exceeds the threshold for two consecutive months	Within 7 days of the end of the second month
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Maximum value of the fund's assets exceeds the threshold for two consecutive months	Within 7 days of the end of the second month
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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
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Number of directors falls below two (for whatever reason)	Immediately
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Notices in relation to an incubator fund's validity period

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 Commission 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 Commission 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\$1,000 to the FSC. Failure to pay may attract administrative penalties and/or other enforcement action

Due by date	Action
30 April	For funds that are limited partnerships, pay the licence fee of US\$500 to the Registry of Corporate Affairs (the Registry)
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*
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
31 July	File semi-annual return in respect of previous six months
30 November	For funds that are companies incorporated from 1 July to 31 December, pay the Registry licence fee*

*US\$450 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 the preceding year:
 - 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.

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 annual 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. 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 (**IRS**). Funds are also required to enroll with the BVI International Tax Authority (**ITA**). Enrollment 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.

Incubator 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 will start in 2016 and CRS reporting will start 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).



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

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