

The British Virgin Islands Approved Manager Regime

The Investment Business (Approved Managers) Regulations (As Revised) (the Approved Managers Regime) (as supplemented by the Approved Investment Managers Guidelines (As Revised) issued by the British Virgin Islands (BVI) Financial Services Commission (the FSC) came into force in the BVI in 2012 and was designed to be a regulatory 'light' regime for qualifying investment managers and advisers who are incorporated or formed in the BVI (Approved Managers). The systemic risk posed by start-up and existing mid-sized managers of both open-ended and closed-ended funds is generally acknowledged to be lower than for those managing larger sums of investor money. Such managers are, however, often subject to the same regulatory regime as larger managers, leading to a disproportionate level of regulatory compliance costs.

To help address this, the BVI adopted the Approved Managers Regime.

While a welcome introduction to the jurisdiction for the existing private and professional fund regime and growing closed-ended fund formation business, it was limited in scope as it was initially only available, subject to certain AUM caps, to qualifying BVI Managers that acted as investment manager or investment adviser to private or professional funds recognised under the Securities Investment Business Act (SIBA), closed-ended funds incorporated, formed or organised under the laws of the BVI and having the characteristics of a private or professional fund and feeder funds into such funds and affiliates of those funds.

Recognising that the regime, as originally enacted, was too restrictive the Investment Business (Approved Managers) Amendment Regulations were introduced in 2014 extending the scope of the Approved Managers Regime to include the ability for funds from 'recognised jurisdictions' that have equivalent characteristics to BVI private or professional funds to be managed or advised by investment managers or investment advisers approved under the Approved Manager Regime.



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Scope of the Approved Managers Regime

Following the revisions, the Approved Managers Regime became available to qualifying BVI managers that act as:

- (a) an investment manager or investment adviser to private or professional funds recognised under SIBA, feeder funds into such funds and affiliates of those funds, as well as funds from recognised jurisdictions that have equivalent characteristics to BVI private or professional funds, provided the assets under management in such open-ended structures are US\$400 million or less;
- (b) an investment manager or investment adviser to closed-ended funds incorporated, formed, or organised under the laws of the BVI or any recognised jurisdiction and that have the characteristics of a private or professional fund, together with their feeders and affiliates, provided the assets under management, i.e. aggregate capital commitments, in such closed-ended structures are US\$1 billion or less; and / or
- (c) an investment manager or investment adviser to such other person as the FSC may approve on a case-by-case basis on application – this can include managed accounts.

The application process is straightforward and Approved Managers are subject to fewer continuing obligations than managers holding a full license under SIBA. Notably, where a person is approved as an investment manager or investment adviser under the Approved Managers Regime:

- (a) the BVI Regulatory Code (As Revised) does not apply;
- (b) no requirement for the appointment of an auditor or a compliance officer; and
- (c) no requirement to maintain a compliance procedures manual under the Financial Services Commission Act (As Revised) (FSC Act).

Notwithstanding these lighter touch provisions, an Approved Manager is still subject to the BVI's anti-money laundering (AML) regime, automatic exchange of information (AEOI) regime and supervision by the FSC.

Recognised jurisdictions

The recognised jurisdictions for the purposes of the Approved Managers Regime are currently Argentina, Australia, Bahamas, Belgium, Bermuda, 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, South Africa, Spain, Sweden, Switzerland, United Kingdom and the USA.

The Approved Manager Regime also permits an investment manager or adviser to provide services to a fund that is not from a recognised jurisdiction where such funds invest all or a substantial part of their assets in a qualifying fund based in the BVI or a recognised jurisdiction. In determining what amounts to a 'substantial part', account should be taken of whether the aggregate of the fund's investment in the qualifying fund amounts to more than 50% of its total assets.

The application process and commencement of business

The application process under the Approved Manager Regime involves the completion of a straightforward application form submitted to the FSC together with supporting documentation and the US\$1,200 application fee. The required information includes:

- (a) the constitutional documents of the BVI manager;
- (b) details of each director or general partner and senior officers and each person who owns or holds an interest in the BVI manager;

- (c) a written declaration by the BVI manager that each director or general partner and senior officer of and any person who owns a significant interest in, the BVI manager is fit and proper in accordance with Schedule 1A of the Regulatory Code;
- (d) the number and details (including the name, address and place of incorporation) of the funds the BVI manager intends to manage or advise;
- (e) the date on which the BVI manager intends to commence relevant business;
- (f) copies of the investment management or investment advisory agreement between the BVI manager and each fund;
- (g) confirmation of which individual will be carrying out the day-to-day investment business functions;
- (h) details of any delegation of any relevant business functions;
- (i) confirmation from the BVI manager's BVI legal practitioner that they have agreed to act for the BVI manager; and
- (j) a declaration from the BVI manager's authorised representative or BVI legal practitioner that the application is complete and meets the application requirements of the Approved Manager Regime.

An application must be submitted to the FSC at least seven days prior to the intended date for the commencement of the relevant business, unless the FSC accepts a shorter period. Assuming all is in order, the application should be processed within 30 days of submission date.

A qualifying BVI manager applying to register as an Approved Manager can commence and carry-on relevant business for a period of up to 30 days from the date of application submission. That period may be extended for an additional period of 30 days on application. If the FSC does not grant application approval within the original 30 days or any approved extended period, the qualifying BVI manager is required to cease carrying on relevant business upon the expiry of the original 30 days or any approved extended period.

Once approved, the FSC will register the Approved Manager in the register of approved investment managers and issue the Approved Manager with a certificate of approval as an approved investment manager.

Continuing requirements for Approved Managers

Fees and Filings with the FSC

The fees currently payable to the FSC for registration as an Approved Manager are a one-off application fee of US\$1,200 plus US\$1,800 annual renewal fee.

An Approved Manager is required to file an annual return with the FSC no later than 31 January and file an AML return with the FSC annually by 31 March.

Approved Managers are required to submit their financial statements to the FSC within six months of the end of the relevant financial year together with a director's certificate and report on the Approved Manager's affairs for the financial year. Financial statements do not have to be audited but must be signed by a director / general partner, depending on the Approved Manager's structure.

Approved Managers must always have:

- (a) at least two directors (one of whom is an individual) where the Approved Manager is a corporate entity, or at least one general partner where the Approved Manager is a limited partnership;
- (b) an authorised representative in the BVI; and
- (c) must engage a BVI legal practitioner.

Where an Approved Manager exceeds the assets under management caps noted above, the Approved Manager must notify the FSC in writing of that fact within seven days of exceeding that amount and is required to cease to carry on business as an Approved Manager unless within three months of the date it exceeds the assets under management caps:

- (a) it no longer exceeds the assets under management caps;
- (b) it submits an application to be fully licenced under SIBA; or
- (c) the FSC, having regard to any risk that may be associated with the Approved Manager, approves in writing that it may continue to function as an Approved Manager.

Approved Managers must notify the FSC in writing of:

- (a) any change to the information submitted as part of the application as noted above within 14 days of the change; and
- (b) any matter in relation to the Approved Manager or its conduct of a relevant business, which has or is likely to have a material impact or a significant regulatory impact with respect to the Approved Manager or the relevant business.

Anti-money laundering

BVI Approved Managers are subject to the BVI Anti-Money Laundering Regulations (As Revised) (AML Regulations) and the provisions of the BVI Anti-Money Laundering and Terrorist Financing Code of Practice. This includes, among other things, requirements to (a) appoint a money laundering reporting officer; and (b) maintain policies and procedures with respect to client identification, record keeping, internal reporting and internal controls and communications, which meet the requirements set out in Regulation 3 of the AML Regulations.

AEOI

An Approved Manager and related entities that are considered a Financial Institution (FI) under FATCA and the OECD's Common Reporting Standard (CRS) (each as implemented in the BVI) have certain obligations including a requirement that they register with the BVI International Tax Authority (the ITA) and, for BVI Reporting FIs, conduct due diligence on, and submit returns to the ITA in respect of any financial accounts held in it by US or other persons resident in a Reportable Jurisdiction (under and for the purposes of CRS), as well as a requirement to establish, implement and maintain written policies and procedures for the purposes of CRS compliance.

Typically, an Approved Manager can fall within an exemption under FATCA and will have no 'financial accounts' for CRS purposes and so compliance with its AEOI obligations can be fairly straightforward by registering with the BVI International Tax Authority and completing a 'nil return'.

Data protection

The BVI Data Protection Act (As Revised) will apply to an Approved Manager in relation to 'personal data' of its directors / general partner and shareholders / limited partners, as well as investors in the funds the Approved Manager manages or advises.

Economic substance

The statutory definition of 'fund management business' does not currently require an Approved Manager to maintain substance in the BVI unless its activities also require an investment business licence under SIBA.