



# ICLG

The International Comparative Legal Guide to:

## **Alternative Investment Funds 2016**

**4th Edition**

A practical cross-border insight into Alternative Investment Funds work

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# British Virgin Islands

Maples and Calder

Tim Clipstone



## 1 Regulatory Framework

### 1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

The Securities and Investment Business Act, 2010, as amended (“SIBA”) and its subsidiary legislation, including the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015, provides for the regulation of open-ended mutual funds, among other matters. Responsibility for regulation under SIBA rests with the Financial Services Commission (the “Commission”) of the British Virgin Islands (the “BVI”).

In addition, the Mutual Fund Regulations, 2010 (the “MFR”) provide further detail regarding the obligations of mutual funds. Public funds are also subject to the Public Funds Code, 2010.

### 1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

A manager or advisor which is established or, in the case of a foreign company, registered in the BVI and which conducts “investment business”, whether or not that investment business is carried on in the BVI, will also fall within the scope of SIBA. Managers and advisors holding a full licence under SIBA are regulated by the Commission and are subject to the Regulatory Code, 2009 (the “Code”); managers and advisors approved under the Investment Business (Approved Managers) Regulations, 2012, as supplemented by the Approved Managers (Amendment) Regulations, 2013, (the “Approved Managers Regulations”) are regulated by the Commission, but are not subject to the Code.

“Investment business” is defined as being engaged, by way of business, in any activity which is of a kind that is specified in Schedule 2 Part A and is not excluded by Schedule 2 Part B to SIBA. Those activities include managing investments belonging to another person on a discretionary basis, acting as the manager or investment advisor of a mutual fund and advising in relation to investments, if the advice is given to someone in their capacity as investor or potential investor or in their capacity as agent for an investor or a potential investor and the advice is on the merits of that person (whether acting as principal or agent) buying, selling, subscribing for or underwriting a particular security or exercising any right conferred by a security to buy, sell, subscribe for or underwrite a security. “Investments” are defined in Schedule 1 to SIBA and include most forms of shares and stock, debt instruments, options, futures, contracts for differences, and derivatives.

Any person conducting investment business in, or from within, the BVI must be licensed by the Commission or be an approved investment manager or advisor under the Approved Managers Regulations, unless that person is exempt from holding a licence. A licence may be restricted (meaning that securities investment business may only be transacted with particular clients) or unrestricted. A licence may also be issued subject to conditions or may be unconditional.

Schedule 2 Part B to SIBA specifically excludes certain activities from the definition of investment business, although those exclusions are unlikely to apply to a person conducting discretionary investment management or investment advisory activities for a mutual fund.

Under Schedule 2 Part C to SIBA, a person carrying on investment business may be excluded from the requirement to obtain a licence or to be approved under the Approved Managers Regulations. It is unlikely that such exclusions would apply to a person conducting discretionary investment management or investment advisory activities for a mutual fund.

An “Excluded Person” includes:

- (a) a company carrying on investment business exclusively for one or more companies within the same group;
- (b) a person who is a participant in a joint enterprise and conducts such investment business for the purposes of, or in connection with, the joint enterprise;
- (c) a person who is a partner in a partnership and conducts such investment business for the purposes of, or in connection with, the partnership; and
- (d) a person who is a director of a company and conducts such investment business for the purposes of, or in connection with, the company,

in each case, provided that the person does not otherwise carry on or hold himself out as carrying on investment business, and does not receive remuneration for carrying on the investment business separate from the remuneration the person receives for acting in the relevant capacity specified.

### 1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Only BVI Alternative Investment Funds that fall under the definition of a “mutual fund” require to be regulated under SIBA. Traditional private equity and other closed-ended structures are not regulated, although a BVI manager or advisor to such a fund would require to be regulated. SIBA defines a mutual fund as a company incorporated, a partnership formed, a unit trust organised or other

similar body formed or organised under the laws of the BVI or the laws of any other country which:

- (a) collects and pools investor funds for the purpose of collective investment; and
- (b) issues fund interests (defined as the rights or interests, however described, of investors in a mutual fund with regard to the assets of the fund, but does not include a debt) that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, the partnership, the unit trust or other similar body, as the case may be, and includes:
  - i. an umbrella fund whose fund interests are split into a number of different class funds or sub-funds; and
  - ii. a fund which has a single investor which is a mutual fund not registered or recognised under SIBA.

There are five main categories of mutual funds under SIBA: private, professional, public, incubator and approved funds. In addition, foreign mutual funds may be registered as Recognised Foreign Funds provided for under SIBA. Of the five main categories of mutual fund, the overwhelming majority are private or professional funds.

#### The Professional Fund

A professional fund is a mutual fund the constitutional documents of which specify that the fund interests shall only be issued to professional investors and the initial investment by each investor in the fund, other than exempted investors, is not less than US\$100,000 or its equivalent in any other currency. A “professional investor” is defined in SIBA as a person: (a) whose ordinary business involves, whether for that person’s own account or the account(s) of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property of the fund; or (b) who has signed a declaration that he, whether individually or jointly with his spouse, has a net worth in excess of US\$1,000,000 or its equivalent in any other currency and that he consents to being treated as a professional investor. Exempt investors include the investment manager and promoter of the fund and its employees.

#### The Private Fund

A private fund is a mutual fund the constitutional documents of which specify either: (a) that it will have no more than 50 investors; or (b) that the making of an invitation to subscribe for, or purchase, fund interests issued by the mutual fund is to be made on a private basis only. An invitation to subscribe for, or purchase, shares issued by a mutual fund on a private basis includes an invitation which is made: (i) to specified persons (however described) and is not calculated to result in fund interests becoming available to other persons or to a large number of persons; or (ii) by reason of a private or business connection between the person making the invitation and the investor.

#### The Public Fund

A public fund is recognised by the Commission, provided that the Commission is satisfied with the following:

- (a) the fund is a BVI business company or unit trust that is governed by the trust laws of the BVI and has a trustee based in the BVI;
- (b) the fund satisfies the requirements of SIBA and, where applicable, the Public Funds Code with respect to its application;
- (c) the fund will, on registration, be in compliance with SIBA and any practice directions issued by the Commission and applicable to the fund;
- (d) the fund’s functionaries satisfy the Commission’s “fit and proper” criteria;

- (e) the fund has, or on registration will have, an independent custodian;
- (f) the fund’s name is not undesirable or misleading; and
- (g) registering the fund is not against the public interest.

#### The Incubator Fund

An incubator fund is a mutual fund which is limited to having no more than 20 investors, who must each invest at least US\$20,000 as an initial investment, and a net asset value of US\$20 million. The fund is authorised to operate for an incubation period of two years, which may be extended to three years on application, without the need to appoint external managers, administrators, custodians or auditors. It must have an authorised representative in the BVI and at least two directors, make semi-annual returns regarding its assets and number of investors and, annually, submit financial statements, which need not be audited, to the Commission. It is not required to have an offering document; however it must issue written risk warnings to investors in a form prescribed by the implementing legislation. At the end of the incubation period, it must either: (i) convert into a different type of regulated fund; (ii) cease to be an open-ended fund; or (iii) liquidate.

#### The Approved Fund

An approved fund is a mutual fund which is limited to having no more than 20 investors and a net asset value of US\$100 million. The fund is authorised to operate for an unlimited period, without the need to appoint external managers, custodians or auditors. It must have an external administrator based in a recognised jurisdiction, an authorised representative in the BVI and at least two directors. It must make a return regarding its assets and number of investors and submit financial statements, which need not be audited, to the Commission annually. It is not required to have an offering document; however, it must issue written risk warnings to investors in a form prescribed by the implementing legislation.

### 1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds) and if so how?

Yes; closed-ended funds are not subject to regulation under SIBA. The key distinction between open-ended and closed-ended funds is the ability of investors to require the redemption or repurchase of some or all of their investment by reference to the net asset value of the interest they have prior to winding up. Where long lock-up periods, commonly in excess of five years, are part of a fund’s terms, BVI practitioners and the Commission generally consider such investment funds to be closed-ended funds, although this will be fact-specific.

### 1.5 What does the authorisation process involve?

- (a) The authorisation process for all funds involves the submission of an application form, together with supporting documents and the requisite fee. Documents required to be filed for private and professional funds are:
  - (i) an offering memorandum;
  - (ii) the Application Form F100 (Parts 1, 4, and 6);
  - (iii) the certificate of incorporation of the fund;
  - (iv) the constitutional documents of the fund (which must contain the applicable fund disclosure required by SIBA); and

- (v) a written consent of each of the fund's lawyer and the fund's auditor confirming acceptance of each of their appointments by the fund.
- (b) Where an offering document is required, offering documents of BVI mutual funds must contain certain investment warnings required by SIBA and such information as is necessary to enable a prospective investor to make an informed decision as to whether or not to invest. The subscription documents must contain an acknowledgment by investors that each investor has been provided with an investment warning and, in the case of a professional fund, a confirmation that the investor is a "professional investor".
- (c) Incubator and approved funds must, at a minimum, submit:
- Form IB-A2-IAF;
  - the constitutional documents of the fund;
  - the offering document, inclusive of investment warning and investment strategy (optional);
  - an investment warning (required in the absence of an offering document); and
  - a written description of investment strategy (required in the absence of an offering document).
- (d) Public funds require a prospectus to be approved in advance of the registration being granted. The prospectus must have been prepared in accordance with the Public Funds Code. In addition, the public fund must satisfy the Commission concerning the matters identified in question 1.3 above.
- (e) Once the documents have been filed, the Commission will generally recognise a private or professional fund within five to seven business days of submission of the application, provided the requisite documentation is complete and no exemptions have been applied for. A professional fund may commence business up to 21 days prior to receiving formal confirmation of recognition, provided it complies with all other requirements of SIBA and submits an application for recognition within seven days of commencing business. Incubator and approved funds may commence trading two business days after a completed application is submitted to the Commission.
- (f) The fee payable on submitting an application for recognition of a professional or private fund is US\$700 and, once recognised, there is an annual recognition fee of US\$1,000 payable upon recognition and annually by 31 March until the fund's certificate of recognition is cancelled. The application fee payable by an incubator or approved fund is US\$1,500 and, once approved, there is a fee of US\$1,000 payable upon approval and due annually by 31 March until the fund is no longer approved as an incubator or approved fund.

#### 1.6 Are there local residence or other local qualification requirements?

There are no local residence requirements. Each approved, recognised or registered mutual fund must, however, appoint an authorised representative in the BVI to represent it when dealing with the Commission.

#### 1.7 What service providers are required?

Private and professional funds must, at all times, have a fund manager, a fund administrator, and a custodian (collectively described, together with investment advisors and prime brokers, as "functionaries"). The custodian of a private fund or a professional fund must be a person who is functionally independent from the fund manager and the fund administrator. The Commission may, on written application made by or on behalf of a private or professional

fund, exempt the fund from the requirement to appoint a custodian or a fund manager, and an application for such an exemption can be made together with the application for recognition as a BVI mutual fund or at any subsequent time. However, no exemption is available in respect of the requirement to have an administrator.

A public fund must at all times have a manager, an administrator and a custodian (unless the fund is exempted by the Commission from the requirement to appoint a custodian). Each functionary of a public fund must be functionally independent from every other functionary of the fund.

An incubator fund is not required to have any functionary appointed; an approved fund must have an administrator appointed at all times, but is not required to have any other functionary appointed.

The Commission will recognise and accept any functionary of a fund that is established and located in a "Recognised Jurisdiction". The current list of Recognised Jurisdictions is as follows:

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

Where a functionary of a fund is not established and located in a recognised jurisdiction, the Commission may recognise and accept the functionary if they are satisfied that the functionary's jurisdiction of establishment and location has a system for the effective regulation of investment business.

#### Directors

A private, professional, incubator and approved fund must at all times have at least two directors, at least one of whom must be an individual. A public fund must at all times have at least two directors. Only individuals can serve as directors of public funds. Although not required, it is becoming market practice for regulated funds to appoint independent directors. Directors of regulated funds are not required to be based in the BVI.

#### Authorised representative

All entities subject to approval, recognition, registration or licensing under SIBA are required to appoint an authorised representative in the BVI in order to represent them in their dealings with the Commission, save where the entity has a substantial presence in the BVI.

#### 1.8 What co-operation or information sharing agreements have been entered into with other governments or regulators?

The BVI has Tax Information Exchange Agreements ("TIEAs") and similar bilateral and multilateral arrangements with 97 countries as at April 2016 and is on the OECD "white list" with respect to the exchange of tax information. In addition, the Commission has entered into bilateral regulatory co-operation agreements pursuant to the EU Directive on Alternative Investment Fund Managers ("AIFMD") with the competent authorities of 26 of the EU and EEA Member States.

## 2 Fund Structures

### 2.1 What are the principal legal structures used for Alternative Investment Funds?

Three types of vehicle are most commonly utilised by BVI investment funds: BVI Business Companies limited by shares; International Limited Partnerships; and Unit Trusts.

#### The BVI Business Company

The most common vehicle for open- or closed-ended funds formed in the BVI is a BVI Business Company limited by shares.

Shares of the same class in a company rank equally with each other. It is also possible to create separate share classes or separate series within the same share class to distinguish between different fee terms, strategies or asset pools; or to calculate, for example, performance fees payable on a “per investor basis” to mirror the capital account concepts found in US funds. The BVI Business Companies Act 2004 is a flexible and modern corporate statute, which provides a clear corporate structure ideally suited to structuring investment funds. In addition, BVI Business Companies may be formed as Segregated Portfolio Companies when used as a regulated investment fund, providing separate legally protected asset and liability cells within one corporate vehicle.

#### The International Limited Partnership

The other major form of investment vehicle available in the BVI is the International Limited Partnership (the “ILP”).

The limited partnership concept is similar to that which applies in various states of the United States, but a BVI ILP does not have a separate legal personality distinct from its partners. Limited partnership structures are popular with United States promoters and their advisors. The general partner of a limited partnership does not need to be a BVI company or person, nor is a non-BVI corporate entity required to be registered as a foreign company to act as general partner. The general partner is liable for any shortfall between the assets and liabilities of the limited partnership and so it is common to form a special purpose vehicle to act as general partner to a limited partnership.

The ILP is commonly used for venture capital and private equity funds with a limited number of investors.

#### The Unit Trust

The concept of a Unit Trust is that subscribers contribute funds to a trustee, who holds those funds on trust whilst they are managed by the investment manager for the benefit of the subscribers, known as unitholders. Each unitholder is entitled to a *pro rata* share of the trust’s assets.

Unit Trusts are relatively uncommon in the BVI and are used (in place of companies) for investors in jurisdictions where participation in a Unit Trust is more acceptable or attractive than owning shares in a company, for example, for regulatory or tax reasons.

### 2.2 Please describe the limited liability of investors.

The limited liability of investors in a BVI investment fund depends upon the nature of the vehicle used and whether the investor has agreed to contribute additional funds to that vehicle pursuant to the terms of the constitutional and offering documentation.

With BVI business companies limited by shares, the liability of the investors is limited to the amount unpaid on their shares or as otherwise provided in the company’s constitutional documents.

Limited Partners (“LPs”) of an ILP are not liable for the debts or obligations of the ILP under the Partnership Act, 1996 (the “Partnership Act”), (a) save as provided by the terms of the applicable partnership agreement, and (b) subject to the provisions of the Partnership Act (i) providing that an LP who takes part in the conduct of the business of the ILP may lose its limited liability with respect to a third party who deals with that ILP and who reasonably believes such LP to be a general partner of such ILP, and (ii) providing for clawback of capital distributions (together with interest) made to LPs within six months of the ILP becoming insolvent.

Investors who are unitholders of an exempted trust must look to the wording of the relevant declaration of trust to provide them with limited liability status and protection.

Despite the limited liability nature of an equity interest purchased by an investor, it is common practice for the subscription and offering documents of BVI investment funds to impose payment obligations on investors over and above the obligation to pay for their investment. Such additional obligations regularly include indemnification for misrepresentations and the requirement to repay excess redemption or withdrawal proceeds which were calculated and paid on the basis of unaudited data.

### 2.3 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

The principal structures used are BVI Business Companies.

### 2.4 Are there any limits on the manager’s ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

Not as a general matter of BVI law; the ability to redeem or transfer equity interests in a fund and any restrictions on such activity will be governed by the constitutional, subscription and offering documents.

### 2.5 Are there any legislative restrictions on transfers of investors’ interests in Alternative Investment Funds?

No, there are no such restrictions.

## 3 Marketing

### 3.1 What legislation governs the production and offering of marketing materials?

There is no obligation to issue an offering document for a private, professional, incubator or approved fund but, where a fund does not do so in the case of private and professional funds, it is required to provide to the Commission an explanation as to why it will not issue an offering document and explain, to the satisfaction of the Commission, how relevant information concerning the fund and any invitation or offer will be provided to investors or potential investors. Where an offering document is issued, it is required to be filed with the application for recognition or approval, and an updated offering document or supplement must be filed within 14 days of any change being made to the filed offering document.

SIBA and the MFR require that a public fund have a prospectus which complies with and is updated in accordance with the terms of the Public Funds Code, 2010.

Closed-ended funds are not regulated and, as such, there are no specific requirements as to the contents of any offering materials; however, the issuer must ensure that its terms are not misleading and the information disclosed does not constitute a misrepresentation.

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### 3.2 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

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The customary minimum disclosure requirements for private and professional funds include the following:

- (a) details of the date of establishment of the fund, its registered office, fiscal year, and its directors (or the directors of the general partner or trustee) together with biographies;
- (b) a description of the fund's investment objectives, policy, and restrictions;
- (c) a description of the fund's investment manager or advisor, together with biographies of portfolio managers and information regarding remuneration, management and performance fees or allocations;
- (d) the names and addresses of the fund's other service providers, together with details of the services to be performed and remuneration;
- (e) the classes of interests available for investment or issue, together with descriptions of any minimum investment, eligibility requirements, and subscription procedures;
- (f) details of the principal rights and restrictions attaching to the fund's equity interests, including with respect to currency, voting, rights to participate in all or some of the assets of the fund, circumstances of winding-up or dissolution and the procedures and conditions for repurchases, redemptions or withdrawals of such equity interests, including suspensions;
- (g) the net asset value calculation policy; and
- (h) details of the fund's material risks and potential conflicts of interest.

The Public Funds Code sets out the content requirement for Public Funds, which broadly codify the above details.

Incubator and approved funds are not required to have an offering document and are required only to issue the statutory risk warnings prescribed in the implementing legislation. Where they do issue an offering document, the Commission would expect that document to describe the investment strategy of the fund and contain the risk warning, as a minimum. In practice, it is common for such offering documents to look similar to those issued by private and professional funds.

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### 3.3 Do the marketing or legal documents need to be registered with or approved by the local regulator?

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The offering document of a private or professional fund and any offering document issued by an incubator or approved fund would usually be filed with the Commission as part of the initial application, but no pre-approval is required. In the case of a public fund, the prospectus would be required to be approved by the Commission prior to its registration as a public fund. Offering documents of a closed-ended fund do not need to be filed or approved.

Where a filed offering document of a private, professional, incubator or approved fund is amended, the amended offering document must be filed with the Commission within 14 days of any change where there is a continuing offering. Proposed amendments to the

prospectus of a public fund must be submitted to the Commission at least 21 days prior to the issue of the revised prospectus.

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### 3.4 What restrictions are there on marketing Alternative Investment Funds?

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Approved, recognised or registered mutual funds, including Recognised Foreign Funds, incorporated as a company are not subject to any restrictions on marketing under BVI statute other than those required for it to qualify for recognition or registration, as the case may be. Closed-ended funds incorporated as a company are not currently subject to any restriction on marketing under BVI statute. ILPs are restricted from being marketed to the public in the BVI. All BVI Alternative Investment Funds do, however, remain subject to any securities laws or marketing laws in the jurisdictions in which they are distributed or marketed and the promoters of such funds are subject to SIBA.

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### 3.5 Can Alternative Investment Funds be marketed to retail investors?

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Yes, subject to the US\$100,000 minimum investment and "professional investor" qualification requirements for professional funds and US\$20,000 minimum investment qualification for incubator funds noted above.

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### 3.6 What qualification requirements must be carried out in relation to prospective investors?

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None, save for the requirement that investors in professional funds qualify as "professional investors" as described above and that all investors in BVI mutual funds are subject to screening in accordance with the BVI's anti-money laundering regime.

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### 3.7 Are there additional restrictions on marketing to public bodies such as government pension funds?

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No, there are not.

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### 3.8 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

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No, there are no such restrictions.

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### 3.9 Are there any restrictions on the participation by financial institutions in Alternative Investments Funds (whether as sponsors or investors) arising from the 2008 financial crisis?

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No, there are not.

## 4 Investments

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### 4.1 Are there any restrictions on the types of activities that can be performed by Alternative Investment Funds?

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No, there are not.

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**4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio whether for diversification reasons or otherwise?**

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No, there are no such limitations.

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**4.3 Are there any restrictions on borrowing by the Alternative Investment Fund?**

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There are no statutory or regulatory restrictions; however, the fund's constitutional and/or offering documents may restrict leverage for the fund or a class of shares, as determined appropriate.

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## 5 Disclosure of Information

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**5.1 What public disclosure must the Alternative Investment Fund make?**

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Funds constituted as BVI Business Companies are required to file their memorandum and articles of association with the Registry of Corporate Affairs (the "Registrar"). They are also required to maintain a statutory register of members but that register is not required to be filed with the Registrar. In addition, they must maintain a register of directors which must be filed on a private basis with the Registrar. Lenders can take advantage of the priority regime for security by making a public filing with the Registry of any charge over assets of a company entered into by a BVI Business Company.

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**5.2 What are the reporting requirements in relation to Alternative Investment Funds?**

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Private, professional and public mutual funds are required to file, in electronic format, audited financial statements within six months of the fund's financial year end, and all mutual funds are required to file a Mutual Fund Annual Return ("MFAR") within six months of the calendar year end. The MFAR provides general, operating and financial information relating to such regulated funds. For filing obligations of incubator and approved funds, see question 1.3 above.

In addition, most Alternative Investment Funds will be required to report certain details regarding their investors on an annual basis to the International Tax Authority of the British Virgin Islands (the "ITA"), in accordance with the provisions of legislation implementing the intergovernmental agreements (known as "IGAs") entered into between the BVI and the US to implement the US FATCA legislation, and the BVI and the UK to implement similar obligations, as well as under the Common Reporting Standard.

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**5.3 Is the use of side letters restricted?**

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No. Side letters are commonly used by BVI investment funds. However, certain considerations should be borne in mind in order to ensure that such letter agreements are compliant with BVI law and consistent with the constitution of the fund, a discussion of which is outside the scope of this chapter.

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## 6 Taxation

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**6.1 What is the tax treatment of the principal forms of Alternative Investment Funds?**

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A fund and all dividends, interest, rents, royalties, compensations, and other amounts paid by the fund are exempt from the provisions of the Income Tax Act in the BVI and any capital gains realised with respect to any shares, debt obligations, or other securities of the fund are exempt from all forms of taxation in the BVI. The Payroll Taxes Act 2004 does not apply to a fund except to the extent that the fund has employees (and deemed employees) rendering services to the fund wholly or mainly in the BVI. No estate, inheritance, succession or gift tax, rate, duty, levy, or other charge is payable with respect to any shares, debt obligation or other securities of the fund. All instruments relating to transfers of property to or by the fund and all instruments relating to transactions in respect of the shares, debt obligations or other securities of the fund and all instruments relating to other transactions relating to the business of the fund are exempt from the payment of stamp duty in the BVI, provided they do not concern BVI situate land. There are currently no withholding taxes or exchange control regulations in the BVI.

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**6.2 What is the tax treatment of the principal forms of investment manager/adviser?**

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The tax treatment for managers and advisors is the same as for funds. Please see question 6.1 above.

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**6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?**

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No; see question 6.1 above.

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**6.4 What is the tax treatment of (a) resident, and (b) non-resident investors in Alternative Investment Funds?**

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There are no differences in tax treatment between the two. See question 6.1 above.

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**6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund?**

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No, it is not.

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**6.6 What steps have been or are being taken to implement the US Foreign Account and Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes?**

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The BVI has signed two intergovernmental agreements to improve international tax compliance and the exchange of information – one with the United States and one with the United Kingdom (the "US IGA" and the "UK IGA", respectively). The BVI has also signed, along with over 90 other countries, a multilateral competent authority agreement to implement the OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard (the "CRS" and together with the US IGA and the UK IGA, "AEOI").



Amendments have been made to the Mutual Legal Assistance (Tax Matters) Act 2003 and orders have been made pursuant to this Act to give effect to the terms of the US IGA and the UK IGA under BVI law (the “BVI legislation”). Guidance notes were published by the government of the BVI in March 2015 to provide practical assistance to entities and others affected by the US IGA and/or UK IGA and the BVI legislation. Further amendments have been made to the BVI legislation to give effect to the terms of the CRS, which took effect on 1 January 2016. The BVI legislation makes it clear that the CRS commentary published by the Organization for Economic Co-operation and Development is an integral part of the CRS and applies for the purposes of the automatic exchange of financial account information, although additional guidance may be issued to aid with compliance with the BVI legislation relating to CRS.

All BVI “Financial Institutions” will be required to comply with the registration, due diligence and reporting requirements of the BVI legislation, except to the extent that they can rely on an exemption that allows them to become a “Non-Reporting Financial Institution” (as defined in the relevant BVI legislation) with respect to one or more of the AEOI regimes.

The BVI legislation requires the fund to, amongst other things: (i) register with the IRS to obtain a Global Intermediary Identification Number (in the context of the US IGA only); (ii) conduct due diligence on its accounts to identify whether any such accounts are considered “Reportable Accounts”; (iii) enrol on the BVI Financial Account Reporting System where it identifies Reportable Accounts; and (iv) report information on such Reportable Accounts to the BVI ITA. The BVI ITA will transmit the information reported to it to the overseas fiscal authority relevant to a reportable account (i.e. the IRS in the case of a US Reportable Account, HMRC in the case of a UK Reportable Account, and the relevant tax authorities in relation to CRS) annually on an automatic basis.

#### 6.7 Are there any other material tax issues?

No, there are not.

#### 6.8 What steps are being taken to implement the OECD’s Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 6 and 7?

There are currently no legislative provisions in the British Virgin Islands which provide for specific measures in connection with BEPS. As a BVI fund will not be claiming access itself to a tax treaty, Action 6 is not directly relevant to it. However, a BVI fund can be set up in a variety of different legal forms, either as legally transparent or opaque, which facilitate cross-border fund structures, whereby either the fund investors may rely on their own treaty or

through investment entities that may be able to rely on their own treaty. Further, the “Global Streamed Fund” proposal identified in the OECD’s Public Discussion Draft dated 24 March 2016 on the Treaty Entitlement of Non-CIV Funds, if adopted, may be of benefit to BVI funds, as the question of whether the fund had treaty access would be irrelevant.

## 7 Reforms

### 7.1 What reforms (if any) are proposed?

#### AIFMD

The broad scope and extra-territorial effect of the AIFMD captures most types of BVI Alternative Investment Funds, regardless of whether they are open-ended or closed-ended and regardless of their legal structure and investment strategy, with very few exceptions.

There are a number of provisions in the AIFMD that require co-operation agreements to be established between the European Securities and Markets Authority (“ESMA”) and the supervisory authorities from the country of origin of non-EU Alternative Investment Funds or Alternative Investment Fund Managers. The Commission has signed 26 co-operation agreements with EU Member State regulators and is actively taking steps to sign co-operation agreements with the remaining EU Member State regulators. Accordingly, the BVI will continue to offer benefits to new and existing Alternative Investment Funds and Managers seeking access to Europe in line with the AIFMD.



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# MAPLES

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