

British Virgin Islands Regulatory Obligations and Filing Deadlines 2020

Key Dates

30 June 2020 – AUDITED ACCOUNTS (for funds and licensees with 31 December 2020 financial year end)

30 June 2020 – FUND ANNUAL RETURN

31 July 2020 – CRS (reporting deadline)

31 August 2020 – FACTA (reporting deadline)

Ongoing - RECORD KEEPING

Ongoing - REGISTER OF DIRECTORS

Pursuant to the Securities and Investment Business Act, 2010 ("SIBA") and the Mutual Funds Regulations, 2010, all BVI private, professional and public funds ("Funds") and all BVI investment business licence holders ("Licensees") are required to appoint, and at all times have, an auditor for the purposes of auditing their financial statements, unless expressly exempted from this requirement.

All Funds and Licensees are required to submit a copy of their audited financial statements to the Financial Services Commission (the "Commission") within six months of the end of each financial year. Funds and Licensee with a financial year ending on 31 December are therefore required to submit their audited financial statements for the 2019 financial year to the Commission on or before 30 June 2020.

Funds and Licensees are likely to be faced with administrative penalties and / or enforcement action if they fail to meet the deadline.

Accounting Standards

Funds, Licensees, Approved Funds, Incubator Funds and Approved Managers must prepare financial statements for each financial year in accordance with one of the following prescribed accounting standards:

- (a) US GAAP;
- (b) International Standards on Accounting (UK);
- (c) International Standards on Auditing;
- (d) Hong Kong Standards on Auditing;
- (e) Canadian Auditing Standards; or
- (f) such other recognised international accounting standards as may be approved by the Commission on a case by case basis.

Exemptions and Extensions

Funds and Licensees which have not appointed an auditor will need to make a written application to the Commission for an exemption from the requirement to appoint an auditor and submission of audited financial statements. Alternatively, Funds and Licensees which are not in a position to

file the audited financial statements by the annual filing deadline may apply to the Commission for an extension. The Commission may, in normal circumstances, grant a maximum extension of up to nine months following the end of the relevant financial year. Please note that in respect of a Licensee, an application for exemption must be submitted to the Commission at least three months prior to the relevant filing deadline.

Approved Funds, Incubator Funds and Approved Managers

All Approved and Incubator Funds under the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015, and all Approved Managers under the Investment Business (Approved Managers) Regulations, 2012 (as amended), are required to submit a copy of their financial statements to the Commission within six months of the end of each financial year. Approved Funds, Incubator Funds and Approved Managers with a financial year ending on 31 December are therefore required to submit their financial statements for the 2019 financial year to the Commission on or before 30 June 2020.

Approved Funds, Incubator Funds and Approved Managers are not required to appoint an auditor but must submit financial statements to the Commission in accordance with SIBA and which comply with required accounting standards as noted above.

In addition, all Approved Funds and Approved Managers are required to submit an annual return to the Commission, in the prescribed form, no later than 31 January each year and an Incubator Fund is required to submit semi-annual reports to the Commission, in the prescribed form, no later than 31 January and 31 July each year.

Private Investment Funds

SIBA has been amended by the Securities and Investment Business (Amendment) Act, 2019 to introduce a new regulatory regime for closed-ended funds in the BVI, termed private investment funds ("PIFs") (please read our previous update¹ for further information).

In addition to the new requirement for PIFs to be recognised by the Commission, PIFs must:

- (a) appoint an authorised representative in the BVI;
- (b) prepare and submit audited financial statements within six months of the end of the financial year end, subject to any extension or exemption; and
- (c) comply with the various notification requirements set out in the Private Investment Funds Regulations.

Non-Licensed Entities

Other types of funds that are not required to register or be recognised under SIBA are not required to prepare or submit audited financial statements to the Commission.

Procedure for Submission

Funds, Licensees, Approved Funds, Incubator Funds, Approved Managers and PIFs should submit their financial statements to the Commission through their appointed authorised representative, Maples Authorised Representative Services (BVI) Limited.

¹ <https://maples.com/en/Knowledge-Centre/Industry-Updates/2020/03/New-Regulatory-Regime-for-Closed-Ended-Funds-in-the-British-Virgin-Islands>

Annual Returns for Funds

All Funds are subject to an annual reporting regime under which a mutual fund annual return ("MFAR") must be submitted to the Commission.

Information to be Disclosed in the MFAR

Each Fund must report on the following:

- (a) Basic prudential and governance information, which includes information on its registered agent and functionaries.
- (b) Summary financial information for the relevant reporting period, which includes: opening NAV, total subscriptions, total redemptions, net income / net loss, dividends / distributions, ending NAV and year-end gross assets.

Asset allocation details are also required, but there is no need to set out specific details of individual investments. Details of investors do not have to be disclosed in the MFAR.

MFARs Filing Deadline

The reporting period for the MFAR is every calendar year, ending on 31 December. Funds are required to submit the MFAR within six months of the end of each reporting period (i.e. on or before 30 June).

Purpose of MFARs

The Commission intends to use the information filed in the MFAR to measure and develop the BVI funds industry while at the same time meeting international reporting standards. We understand that the Commission will not make the MFAR publicly available, but may share information gathered from the MFAR on an aggregate basis.

Filing Procedure for the MFAR

The MFAR must be submitted through the following dedicated portal² and the Maples Group can assist with this filing.

If you have not previously filed your MFAR electronically you must register as a new user on the Commission's website and obtain log in details by email. A user manual can be found on the portal which may be of assistance.

Valuation Policy

Any BVI open-ended mutual fund or PIF is now required to maintain a clear and comprehensive fund valuation policy, which must include procedures to ensure that such valuation policy is effectively implemented. The new requirements require the valuation policy and procedures to:

- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property;
- (b) be consistent with the provisions concerning valuations contained in the fund's constitutional documents and offering documents;
- (c) require valuations to be undertaken at least on an annual basis;
- (d) include procedures for preparing reports on the valuation of fund property; and
- (e) specify the mechanisms in place for the dissemination of valuation information and reports to investors.

The appointed person responsible for the valuation of fund property must value the fund's assets in accordance with the valuation policy.

² <https://returns.bvifsc.vg>

While the new requirement applies immediately for any new mutual funds or PIFs, any open-ended funds that were in existence prior to 31 December 2019 have until 1 July 2020 to comply with these new requirements.

Enhanced Record Keeping Requirements

Since 2005, BVI business companies have been required under the BVI Business Companies Act (as amended) (the "BC Act") to keep records that are sufficient to show and explain the company's transactions and that enable the financial position of the company to be determined with reasonable accuracy at any time. These statutory record keeping requirements on companies have also been applied to BVI limited partnerships by way of an amendment to the Partnership Act, which came into force in November 2012. BVI companies and partnerships remain entitled to adopt accounting standards appropriate to them in the jurisdictions in which they operate, provided the minimum transparency standard discussed above is met.

The records and underlying documentation that BVI companies and limited partnerships are required to keep must be kept for a period of at least five years under the BC Act. The five year period starts on the date of completion of the transaction to which the records and underlying documentation relate, or the termination of the business relationship to which they relate.

The records and documentation of a company or a limited partnership are not required to be kept in the BVI. However, the company or limited partnership must notify its registered agent of the physical location of its records and underlying documentation.

As an additional requirement, all BVI business companies must notify the registered agent of the identity of the natural person who maintains and controls the company's records and underlying

documentation. Changes to either the location or person maintaining and controlling the records and documentation must be notified to the registered agent within 14 days of any change. As such, all Funds that are formed as companies or limited partnerships are required to notify their registered agent in the BVI of the location of the financial records and documents of the Fund and, in the case of companies, the person who maintains and controls those records.

If you have not already done so, please notify us of the location of the records and documents and, where relevant, the identity of the person who maintains and controls the records and underlying documentation as soon as possible.

Register of Directors

By way of reminder, all newly incorporated BVI companies need to file their register of directors with the Registrar of Corporate Affairs of the BVI (the "Registrar") within 21 days of the appointment of their first director.

Where there is a change made to a filed register of directors, whether due to the appointment of a new director, the resignation of an existing director or the change of an existing director's details, particulars of the amendment to the register of directors must be filed with the Registrar within 30 days of the changes occurring.

Failure by BVI Companies to file on time will incur a penalty payable to the Registrar which will be levied and payable when the register or particulars of the change to the register are filed.

AEOI Update

All Financial Institutions ("FIs") have obligations to register and conduct due diligence and report to the BVI's International Tax Authority (the "ITA") under the Mutual Legal Assistance (Tax Matters) Act, 2003 (as amended) in respect of Reportable

Accounts pursuant to FATCA and the OECD's Common Reporting Standard ("CRS"). All FIs should ensure compliance with the following deadlines, where applicable³:

30 June 2020

- Deadline for enrolment on BVIFARS portal for CRS where not enrolled for US FATCA

31 July 2020

- Deadline for enrolment on BVIFARS portal for FATCA
- Reporting deadline for CRS – reporting on relevant Reportable Accounts identified as such for 2019

31 August 2020

- Reporting deadline for US FATCA – reporting on US Reportable Accounts for 2019

Written Policies and Procedures

Pursuant to the Mutual Legal Assistance (Tax Matters)(Amendment) Act, 2018 (the "Amendment Act"), all FIs are required to establish, implement and maintain written policies and procedures for the purposes of complying with their CRS obligations. Failure to establish and maintain written policies and procedures is an offence with the FI being liable for a fine not exceeding US\$100,000. Please let us know if you require any assistance with preparing a comprehensive policies and procedures manual that meets this new requirement.

³ Please note the above deadlines are extensions to the normal filing deadlines for 2020 only due to adjustments by the ITA to assist with COVID-19 related disruptions.

Nil Returns

The Amendment Act also requires every FI to register with the ITA for CRS regardless of whether the FI is a reporting or non-reporting FI and to file nil returns for FI where no reportable accounts are maintained. For existing FIs, the registration deadline was 30 April 2019 and the reporting deadline was 31 May 2019. For new FIs, the registration deadline is 30 June 2020 and the reporting deadline is 31 July 2020.

For further information, please liaise with your usual Maples Group contact or one of the individuals listed below.

British Virgin Islands

Richard May

+1 284 852 3027

richard.may@maples.com

Guy Williamson

+1 284 852 3012

guy.williamson@maples.com

Amel Wehden

+1 284 852 3034

amel.wehden@maples.com

Claire Potter

+1 284 852 3031

claire.potter@maples.com

Cayman Islands

Martin Byers

+1 345 814 5463

martin.byers@maples.com

Dubai

Philip Ireland

+971 4 360 4073

philip.ireland@maples.com

Hong Kong

Ann Ng

+852 3690 7475

ann.ng@maples.com

Matt Roberts

+852 3690 7405

matt.roberts@maples.com

Sharon Yap

+852 2971 3079

sharon.yap@maples.com

London

Heidi de Vries

+44 20 7466 1651

heidi.devries@maples.com

Joanna Russell

+44 20 7466 1678

joanna.russell@maples.com

Singapore

Michael Gagie

+65 6922 8402

michael.gagie@maples.com

June 2020

© **MAPLES GROUP**

This update is intended to provide only general information for the clients and professional contacts of Maples Group. It does not purport to be comprehensive or to render legal advice.