

Legislative Update on the BVI's Securities and Investment Business (Amendment) Act 2019 (SIBA)

March 2020

The Securities and Investment Business (Amendment) Act 2019 (SIBA) has introduced a new regulatory regime for closed-ended funds by way of the new Private Investment Funds Regulation, 2019. This new regime came into force on 31 December 2019 and creates a new category of fund in the BVI, whereby a closed-ended fund is required to file with the BVI Financial Services Commission (FSC) in order to be recognised, provided it meets certain prescribed criteria.

What Is a Private Investment Fund?

A closed-ended fund is a company, partnership, unit trust or any other body that will be deemed a "private investment fund" (PIF) provided it:

- collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk, and
- issues fund interests that entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or a part of the net assets.

What Are the Eligibility Criteria?

To be eligible to be recognised as a PIF, the following eligibility criteria must be satisfied:

- The fund must be lawfully incorporated, registered, formed or organised (in the BVI or elsewhere)

- The fund's constitutional documents must specify one of the following:

- The fund is not authorised to have more than 50 investors
- An invitation to subscribe for or purchase fund interests issued by the fund, must be made on a private basis only
- The fund interest shall be issued only to professional investors, with an initial investment of each professional investor, other than an exempted investor, being at least US\$100,000

- The fund must satisfy such other criteria as may be specified in the PIF regulations

- The fund will, on being recognised, comply with the Securities Investment Business Amendment Act, PIF regulations, and any other relevant legislation

- The PIF does not act against or undermine the public interest

How Does the FSC Recognise a Closed-Ended Fund?

To be recognised as a PIF, an application must be submitted to the FSC within 14 days of commencing business. The application must detail:

- The address of the fund's place of business in the Virgin Islands

- The name and address of each of the fund's directors
- The name and address of the fund's authorised representative
- If the fund is a unit trust, the name and address of the trustee
- If the fund is a limited partnership, the name and address of the general partners
- The address of any place or places of business that the fund may have outside the Virgin Islands
- The name and address of each appointed person
- Such other information as may be required by the approved form

This application must be accompanied by:

- A copy of the fund's constitutional documents
- A copy of the offering or term sheet, or the proposed offering document or term sheet, if the PIF has issued, or intends to issue an offering document or a term sheet
- A copy of the fund's valuation policy

Obligations for PIF

Once the PIF is recognised, the following obligations must be complied with:

- A PIF must have two (2) directors at all times
- A PIF must have an appointed person at all times who is responsible for:
 - Management of fund property
 - Valuation of fund property
 - Safekeeping of fund property, including the segregation of fund property
- Maintenance of a clear and comprehensive policy for the valuation of fund property
- The offering terms must contain the regulatory disclosures as required by PIF regulations
- Preparation of audited financial statements annually and filing a copy of these statements with the FSC within six (6) months of the financial year to which they relate
- Notifying the FSC within 14 days of significant changes

- Maintenance of financial records that are sufficient to show and explain the PIF's transactions at any time, enable its financial position to be determined with reasonable accuracy, and enable it to prepare such financial statements and make such returns as it is required to prepare and make under the SIBA and the PIF regulations

When Do Existing PIFs Need to Register to Meet the Requirements of the Regulations?

Transitional provisions require existing closed-ended funds to file with the commission by 1 July 2020 to be compliant with the regulations.

What Other Changes Have Taken Place with the Establishment of These Regulations?

Along with implementation of the Private Investment Funds Regulations, 2019, the following legislations were enacted, which impact the BVI's fund regimes:

- Securities and Investment Business (Amendment) Act, 2019
- Private Investment Funds Regime Guidelines
- Anti-Money Laundering Regulations, 2019
- Financial Services (Miscellaneous Exemptions) (Amendment) Regulations, 2019
- Financial Services (Fees) (Amendment) Regulations, 2019

The key change for existing funds (professional, private, incubator and approved), under the respective acts, is the requirement to establish a valuation policy that must be followed for valuation functions. The incubator and approved funds are also required to have safekeeping arrangements in place.

In addition, SIBA now requires that a licensed fund manager and licensed PIF manager notify the commission within 21 days of commencing to act as an investment manager of a fund.

For more details on formation and recognition of a PIF, please contact Ms. Joanna Fonseca at jfonseca@tridenttrust.com or your usual Trident representative.

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