



# British Virgin Islands

## FUND LEGISLATION

Securities and Investment Business Act, 2010 (SIBA)

## NUMBER OF FUNDS

As at 31 March 2012 (the latest available): .....2525

## NUMBER OF FUNDS BY CATEGORY

As at 31 March 2012:

Private: .....681

Professional:.....1668

Public: .....176

Only open ended funds are required to be registered or recognised under SIBA. No statistics are available for other types of funds.

There is currently no distinction in the licensing process between directly invested hedge funds and funds of hedge funds and so no official figures exist for the break down.

**Domiciled and administered fund assets total:**

No figures currently available.

**Domiciled and administered fund assets by category:**

No figures currently available.

## REGULATOR

Financial Services Commission, Investment Business Division. Contact: Broderick Penn, Director of Investment Business Division; Tel: +1 284-494-1324 or + 1284-494-4190; Fax: +1 284-494-5016

Address: BVI Financial Services Commission, Pasea Estate, PO Box 418, Road Town, Tortola, VG 1110, BVI

## SERVICE PROVIDERS

Law firms: .....8 multi-jurisdictional firms;

.....approximately 14 other BVI commercial firms

Administrators:.....89 licensed

Authorised representatives: .....45 license holders  
 Investment managers: ..... 536 SIBA license holders  
 Custodians:.....6 licensed  
 Corporate service providers:.....128 licensed  
 Accountants/auditors: ..... 7 international firms  
 Trustees:.....84 Class I Trust license holders  
 Insolvency Practitioners: .....22 licensed

**Local stock exchange:** No

**Local fund industry body:**

BVI Investment Funds Association, PO Box 71, Road Town, Tortola, VG 1110, BVI

**Promotion agency for funds/financial sector:**

BVI International Finance Centre, Haycraft Building, 1 Pasea Estate, Road Town, Tortola VG1120, BVI.

Email: info@bviifc.gov.vg; Tel: +1 284 468 4335;

Fax: +1 284 468 1002

## TAX INFORMATION EXCHANGE AGREEMENTS

Aruba; Australia; China; Czech Republic; Denmark; Faroe Islands; Finland; France; Germany; Greenland; Iceland; India; Ireland; Netherlands; Netherlands Antilles; New Zealand; Norway; Portugal; Sweden; UK; USA

## ALTERNATIVE FUND, MANAGER AND SERVICE PROVIDER INFORMATION

### TYPES OF ALTERNATIVE FUND VEHICLE

Open-ended or closed-ended investment company (see below), limited partnership, unit trust, common contractual fund, umbrella fund

**Types of Corporate Vehicle:**

- Company Limited by Shares, including:
  - Restricted Purposes Company
  - Segregated Portfolio Company (for recognised or registered funds and licensed insurance companies only)
- Company Limited by Guarantee authorised to issue shares;
- Company Limited by Guarantee not authorised to issue shares;
- Unlimited Company authorised to issue shares; and
- Unlimited Company not authorised to issue shares

### TYPES OF REGULATORY FUND CATEGORY

Public; Private; Professional

### AUDIT REQUIREMENT

- Public Funds: Financial statements must be audited by an auditor approved by the Financial Services Commission (no local sign off).
- Private and Professional Funds: Financial statements must be audited by an auditor meeting certain prescribed criteria unless the fund is exempted from the audit requirement by the Financial Services Commission (no local sign off).

### FINANCIAL STATEMENT REQUIREMENTS

- Public funds: Financial statements for each financial year must be prepared which comply with IFRS, US, UK or Canadian GAAP or such other accounting standards as may be approved by the Financial Services Commission on a case by case basis.
- Private and professional funds: Financial statements for each financial year must be prepared in

accordance with one of the prescribed financial standards (UK, US or Canadian GAAP or IFRS) or internationally recognized and generally accepted accounting standards equivalent to such standards.

- All funds regulated under SIBA must also submit an annual return to the Financial Services Commission containing summary prudential and governance information.

#### **COST OF REGULATORY FEES (BY TYPE OF FUND):**

Private and Professional:..... US\$1,000  
Public: ..... US\$1,500

#### **OVERALL COST OF FUND ESTABLISHMENT**

Private and Professional:.....From US\$12,000  
Public: .....From US\$20,000

#### **REGULATORY APPROVAL TIME**

From submission of complete application:  
Private and Professional Funds:..... 2 - 5 business days  
Public Fund: ..... 2-3 weeks

#### **OVERALL ESTABLISHMENT TIME**

Private and Professional:.....At least 2 weeks  
Public Fund: .....At least 10 weeks

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# The British Virgin Islands

By Ross Munro, Harneys

The British Virgin Islands is a leading jurisdiction for the formation of alternative investment funds, having approximately 2,525 funds registered or recognised under the Securities and Investment Business Act 2010 (SIBA). Funds recognised or registered under SIBA are regulated by the Financial Services Commission (the Commission), the financial regulator in the British Virgin Islands.

SIBA requires all investment funds falling within its definition of “fund” to be recognised or registered with the Commission. SIBA restricts the definition of “mutual fund” to open-ended funds that entitle investors to demand redemption of their fund interests immediately or within a period of notice. Accordingly only such funds are regulated under SIBA. Closed ended funds are not subject to specific regulation although BVI established managers and other BVI established functionaries of closed ended funds will in many circumstances require a licence under SIBA.

SIBA requires any person carrying on “investment business” in or from within the BVI to hold a licence. The activities constituting investment business include acting

as an investment manager, administrator, investment advisor or custodian with respect to a wide variety of financial instruments. It includes most functionaries of open and closed ended funds but the precise outcome depends on the services provided and the structure of the fund. It is important to note, however, that non-BVI functionaries of a BVI fund carrying on business from outside the BVI will not generally need to hold a license under SIBA.

#### **Fund vehicles**

Sponsors and fund managers considering setting up investment funds in the British Virgin Islands may choose from the following range of possible vehicles:

- BVI Business Company
- Limited Partnership
- Unit Trust

The vast majority of British Virgin Islands investment funds are established as companies limited by shares under the BVI Business Companies Act, 2004 or as limited partnerships formed under the Partnership Act, 1996.

### Categories of fund

The three categories of regulated fund are as follows:

- Private fund. Restricted to either (a) having no more than 50 investors or (b) only making an invitation to subscribe for or purchase fund interests on a private basis.
- Professional fund. May only issue fund interests to “professional investors” and the initial investment for all investors, other than exempt investors (as defined), may not be less than US\$100,000 or equivalent in another currency.
- Public fund. Greater regulation imposed as no restrictions on investors or minimum investment.

Private funds and public funds must be recognised or registered under SIBA before they commence business whereas professional funds may commence business for a period of up to 21 days without being recognised provided that they otherwise comply with the requirements of SIBA as if they were recognised and that an application is submitted to the Commission within 14 days.

A professional investor is a person either (a) whose ordinary business involves 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 net worth in excess of US\$1,000,000 and that he consents to be being treated as a professional investor.

### Functionaries / service providers

All functionaries of funds regulated under SIBA must satisfy the Commission’s “fit and proper” criteria. Functionaries of a public fund require the prior approval of the Commission. Every public fund must have a manager, administrator and custodian and each must be independent or functionally independent of the fund and each other.

Private and professional funds must generally have a manager, administrator and custodian although an exemption from the requirement to appoint a manager and/or custodian is available upon application to the Commission.

Functionaries of funds established and located in the BVI or any of the following countries may be recognised and accepted by the Commission for the purposes of acting as a functionary of a BVI fund:

Argentina, Australia, Bahamas, Bermuda, Belgium, 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, Spain, South Africa, Sweden, Switzerland, United Kingdom and United States of America.

The Commission may recognise and accept a functionary from outside the BVI and the above countries if it is satisfied that the country has a system for the effective regulation of investment business, including funds.

### No restrictions on strategy, leverage or valuation

There are no restrictions on the strategy a fund may pursue, provided it is not otherwise in breach of the laws of the British Virgin Islands. There are no limits on leverage taken by the funds. There are currently no rules imposed on funds as to how they value their assets. The Public Funds Code came into effect on 31 March 2011 and only applies to registered public funds. It imposes additional disclosure and governance requirements on public funds (including provisions relating to valuation policy and disclosure).

### Financial statements and audit

*Public funds:* Financial statements for each financial year must be prepared which comply with IFRS, US, UK or Canadian GAAP or such other accounting standards as may be approved by the Financial Services Commission on a case by case basis. The financial statements must be audited by an auditor approved by the Financial Services Commission. There is no local sign off.

*Private and professional funds:* Financial statements for each financial year must be prepared in accordance with one of the prescribed financial standards (UK, US or Canadian GAAP or IFRS) or internationally recognised and generally accepted accounting standards equivalent to such standards. The Financial statements must be audited by an auditor meeting certain prescribed criteria unless the fund is exempted from the audit requirement by the Financial Services Commission (no local sign off).

### Annual return

All funds regulated under SIBA must submit a return to the Commission no later than 30 June in each year in respect of the calendar year ending on 31 December of the previous year. The return contains basic prudential and governance information and summary financial information. The return does not require any information on the identity of investors or the specific investments within the fund’s portfolio. Such information is confidential to the Commission and may only be publicly disclosed on an aggregated basis.

### Fund documentation

*Public Funds:* Public funds may not make an invitation to the public to subscribe for or purchase fund interests unless the offer is contained in a prospectus which has been approved by the fund’s governing body and the prospectus has been registered (i.e. approved) by the

Commission. The prospectus is required to provide full and accurate disclosure of all information as investors would reasonably require and expect to find for the purpose of making an informed investment decision. Additional minimum disclosure requirements for a prospectus are to be contained in the Public Funds Code (currently in consultation).

*Private / Professional Funds:* A private or professional fund must submit a copy of its proposed offering document to the Commission upon application for recognition or provide an explanation as to why no offering document is to be issued. The prescribed investment warning must be included in a prominent place within an offering document (or if no offering document is issued, provided to each investor or potential investor in a separate document) but otherwise SIBA does not prescribe what should be included within the offering document. Copies of offering documents issued to investors or potential investors must be filed with the Commission. The constitutional documents of private and professional funds must contain prescribed statements referring to their status as private and professional funds respectively.

#### **Directors / authorised representative**

SIBA requires that every fund established as a company have at least 2 directors. Corporate directors are permitted for private and professional funds provided that at least one director is an individual but are not permitted for public funds. There are no requirements for local directors. However, each fund must appoint an authorised representative unless the fund has a significant management presence in the BVI. The authorised representative itself must be a person located in the BVI holding a certificate from the Commission authorising it to act in such capacity.

#### **Ongoing requirements**

Regulated funds are subject to a reasonable number of requirements to notify the Commission either before or after the occurrence of certain events such as appointment and resignation of directors and functionaries and changes to documents.

#### **Manager's and administrator's licenses**

A licence may be granted by the Commission to a person proposing to carry on business in or from within the BVI as the functionary of funds if the Commission is satisfied that, inter alia:

- a) the applicant, its directors and senior officers and significant shareholders satisfy the Commission's fit and proper criteria; and
- b) the organisation, management and financial resources of the applicant are, adequate for the carrying on of the relevant investment business.

A holder of a licence under SIBA must comply with the requirements of SIBA and relevant sections of the Regulatory Code, 2009.

#### **AML**

All BVI funds, managers and administrators must comply with the Anti-Money Laundering Regulations, 2008 and the Anti-money Laundering and Terrorist Financing Code of Practice, 2008. However, BVI funds commonly outsource the majority of their obligations under such legislation to their administrators who are then required to comply with the AML laws of their home jurisdictions.

#### **Tax**

BVI funds and functionaries are exempt from BVI income tax. Furthermore, investors in BVI funds are not liable to any BVI income tax with respect to fund interests. There are no estate, inheritance, succession or gift taxes payable in the British Virgin Islands with respect to any interests in a fund.