

FOCUS ON

BRITISH VIRGIN ISLANDS REGULATION

As a new 'regulation light' fund manager regime is launched in the British Virgin Islands, eligible fund managers can now count on a simpler application process. Philip Graham of Harneys provides an update



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The British Virgin Islands (BVI) has introduced a new 'regulation light' fund manager regime tailored to meet the requirements of private equity, venture capital and a multitude of other fund managers seeking to commence business quickly and in a cost-effective way. The 'approved manager' regime came into effect on 10 December 2012, with the enactment of the Investment Business (Approved Managers) Regulations, 2012 (Regulations) and Approved Investment Managers Guidelines (Guidelines).

The new regulatory alternative complements the more regulated investment business licensing regime under Part I of the Securities and Investment Business Act 2010 (SIBA).

It comes as a result of months of discussion and co-operation between the local service providers in the jurisdiction and the Financial Services Commission of the BVI (Commission) to ensure that the funds industry has an appropriate suite of products to offer the wide variety of requests received.

APPLYING TO BE AN APPROVED MANAGER

The application process is simple and straightforward. An applicant must submit its application in the prescribed form to the Commission along with the ap-

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plication fee of \$1,000 at least seven days prior to the intended date of commencement of the 'relevant business'. After the expiry of the seven-day period (or such shorter period as the Commission may approve), the applicant may commence and carry on 'relevant business' for a period of up to 30 days (such period being extendable for a further period of 30 days by the Commission).

During this 30-day (or extended) period, the applicant will be deemed to have been approved under the Regulations. Should the Commission not grant approval to an applicant or reject the application, the applicant is required to cease carrying on the 'relevant business'.

The applicant must also submit, among other things:

- a copy of the applicant's constitutional documents;
- brief details of each director or general partner and senior officer of, and each person who owns or holds a "significant interest" in, the applicant, along with a resume or curriculum vitae;
- a written declaration by the applicant that each director or general partner and senior officer and each person who owns or holds a significant interest in the applicant is "fit and proper";
- details of the funds that the applicant intends to act for upon commencement of "relevant business"; and
- details of the individuals who will carry out the day-to-day investment business functions of the applicant.

REQUIREMENTS AND LIMITATIONS ON APPROVED MANAGERS

A key feature of the new regime is that the approved manager is subject to a limit on the size of the funds which it manages or advises. Open-ended funds cannot exceed an aggregate of \$400m in assets under management and closed-ended funds cannot exceed \$1bn of capital commitments. The thinking around these limits is that once they are exceeded, it is logical that a manager should be more appropriately regulated under the licensing regime of SIBA given the level of assets under management.

There are also limits on the type of funds approved managers may manage. Generally, a manager may carry





on business as an investment manager or investment adviser to:

- (a) one or more private or professional funds recognised under SIBA (the funds may be domiciled in the BVI or elsewhere, provided they are recognised under SIBA); or
- (b) one or more closed-ended funds which are domiciled in the BVI and have certain characteristics of a private or professional fund.

However, there are some limited additions to this list as well.

ONGOING OBLIGATIONS OF APPROVED MANAGERS

The ongoing obligations for approved managers are far fewer than those required of managers and advisors holding an investment business license under SIBA.

Generally, an approved manager must:

- (a) have an authorised representative and at least two directors (one of whom is an individual) at all times;
- (b) notify the Commission of any change to the information provided by the approved manager in connection with its application; and
- (c) submit financial statements (which do not need to be audited), a director's certificate and a report on the affairs of the approved manager to the Commission, as well as an annual return.

DISCUSSION

While an approved manager will not be restricted to any material extent on the way it carries on business, the regime has been intentionally crafted to be a "licensing regime" rather than an entirely exempted activity. The Commission will have powers at its disposal to take enforcement action against the approved manager should it determine the need to do so in order to discharge its function as a regulator. The approved manager regime will always be compared to the exempt manager regime in the Cayman Islands (or to describe it more accu-

rately, registration as an excluded person to fall outside of the licensing requirement of the Cayman Islands Securities and Investment Business Law (SIBL)). It is certainly felt in the BVI that the approved manager regime has a couple of distinct advantages:

- (a) the regulatory fees payable by an approved manager are significantly lower for an approved manager (both for the initial application and on an annual basis thereafter); and
- (b) an approved manager may act as manager or adviser to private funds and closed-ended funds that have the characteristics of private funds. Such funds only have restrictions on the number



THE COMMISSION WILL HAVE POWERS TO TAKE ENFORCEMENT ACTION AGAINST THE APPROVED MANAGER



of investors and no restrictions on the sophistication or net worth of the investors, whereas a Cayman Islands exempt manager may, broadly speaking, only act for funds which fall within the definitions of "sophisticated investor" or "high-net-worth person" under SIBL. This makes the BVI regime ideal for managers of funds with less than fifty investors, especially start-ups and family funds, for example.

The approved manager regime has therefore provided an exceptionally helpful extra string to the bow of the BVI funds industry and one that should allow practitioners in the jurisdiction to provide a full and well-rounded service to clients. ■