

BVI Incubator and Approved Fund

JANUARY 2017

BVI Incubator and Approved Fund – just as we thought.

Nearly 18 months ago, the Incubator Fund and the Approved Fund were introduced in the British Virgin Islands under the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015. As we thought at the time, these have quickly become popular vehicles in short order for start up and new managers, with more than 50 new funds being established in a short period. Approved Funds being marginally more popular than Incubator Funds. These funds have satisfied a recognised need in the market for a lightly regulated investment vehicle that can easily grow along with a first time or start up manager as their business and assets under management grow.

For many years, a type of closed end structure was used to fill this void, and while those structures may still have their place, the draw back was that they were closed – not in the sense of a limited offering of shares but rather an investor's right to redeem was restricted. This restriction often caused a manager difficulty in fund raising as even friends and relatives would generally prefer a mechanism to enable them withdraw their funds on demand if needed or to allow them to vote with their feet if investment strategy was not going to plan.

The Regulations enable Incubator and Approved Funds to be set up and launched on a fast track, cost effective basis with minimal regulatory oversight by the BVI Financial Services Commission. This has proved successful.

Fund requirements

An incubator fund has a minimum investment requirement of US\$20,000, a cap on net assets of US\$20M and limit of 20 investors. An incubator fund does not need to appoint an administrator, custodian, investment manager or auditor.

An approved fund has a net assets cap of US\$100M and no more than 20 investors are permitted, but with no minimum investment criteria. An approved fund may operate without appointing a custodian, investment manager, or auditor, but will need an administrator.

Application process

Applications for approval as an Incubator Fund or an Approved Fund are made to the Commission and must be accompanied by:

- the constitutional documents;
- details of the investment strategy;
- a prescribed form of investor warning; and
- an application fee of US\$1,500.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

An Incubator Fund or Approved Fund can commence business 2 days from the date of receipt of a completed application by the Commission.

Duration and conversion of incubator fund

An Incubator Fund has a limited life of two years which can be extended for up to 12 months. An Approved Fund has no such limits. An Incubator Fund can convert to an Approved Fund, a private or professional fund, or may wind up at the end of its term. An Incubator Fund can convert to a private or professional fund or to an Approved Fund by making an appropriate application to the Commission.

Ongoing obligations

In keeping with the cost efficient approach to these vehicles, service provider requirements are minimal. Each fund is required to appoint an authorized representative in the BVI and an Approved Fund is required to have an administrator at all times. However, there are no mandatory custody requirements.

There is no requirement for the issuance of an offering document and where the fund determines not to issue one, the required investor warnings can be set forth in a separate term sheet.

Otherwise, an Incubator Fund and Approved Fund are required by the Regulations to:

- Pay an annual fee of US\$1,000 on or before 31 March of each year
- Have a minimum of two directors at all times, one of whom must be an individual
- Notify the Commission of any change to any of the information submitted to the Commission in its application; for instance in relation to it or its conduct (which has or is likely to have a material impact or Significant regulatory impact), directors, etc.
- Prepare and file annual financial statements to the Commission (with no requirement for an independent audit)
- File bi-annual returns with the Commission

Since the introduction of the Regulations we have had experience establishing a number of these funds and we expect that, as new potential managers learn about these structures, they will continue to prove attractive vehicles to start up managers, family offices and others looking for a simple, quick and cost effective way to establish a lightly regulated investment vehicle.