

BRITISH VIRGIN ISLANDS - NEW REGULATIONS FOR CLOSED-ENDED FUNDS

Overview

With the passing of the Securities and Investment Business (Amendment) Act, 2019 (the “**Amendment Act**”), the British Virgin Islands (“**BVI**”) introduced a new regulatory regime applicable to most closed-ended funds operating in or from within the BVI.

Prior to the passing of the Amendment Act, only open-ended investment funds were regulated in the BVI, closed-ended funds were not. Open-ended funds are investment funds which provide their investors with the option to redeem their shares or interests in the investment fund at their request. In contrast, the redemption of interests in a closed-ended fund requires the approval by the closed-ended fund. Due to the illiquid nature of its investments, most private equity funds are structured as closed-ended funds.

This amendment to the BVI investment funds regime is a response to demands by the Council of the European Union’s Code of Conduct for Business Taxation to regulate closed-ended funds in the BVI.

Private Investment Funds

Under the Amendment Act, most closed-ended funds will fall under the newly created category of regulated funds referred to as **private investment funds (“PIF”)**. The Amendment Act defines a PIF as: “a company, partnership, unit trust or any other body that is incorporated, registered, formed or organised, whether under the laws of the BVI or of any other country, which

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

An entity that does not meet these two criteria (or does not carry on business as a private investment fund in or from within the BVI) will not be restricted from conducting its business as a collective investment scheme under the Amendment Act.

Regulatory Requirements for a PIF

The Amendment Act requires a PIF to seek regulatory approval from and submit an application for recognition as a PIF to the BVI Financial Services Commission (the “**Commission**”). The Commission will approve a PIF by way of issuing a certificate of recognition, if the PIF:

- is lawfully incorporated, registered, formed or organised under the laws of the BVI or under the laws of a country outside the BVI; and
- its constitutional documents specify that:
 - the PIF is not authorised to have more than 50 investors; or
 - an invitation to subscribe for, or purchase, PIF interests issued by the PIF shall be made on a private basis only; or
 - the PIF interests of the fund shall be issued only to professional investors with an initial investment of each professional investor, other than exempted investors, of not less than US\$100,000 (or its equivalent

in another currency); and

- satisfies such other criteria as may be specified for recognition of a PIF in the PIF Regulations;
- the PIF will, on being recognised, be in compliance with the Amendment Act, the PIF Regulations and any practice directions applicable to the entity; and
- recognising the entity as a PIF is not against the public interest.

PIFs set up before 1 January 2020 will have a transition period to 1 July 2020 to comply with this new regime and to obtain recognition from the Commission.

Ongoing Obligations for PIFs

PIFs will be required to comply with a number of ongoing obligations, including (but not limited to):

- to have at all times “appointed persons” responsible for undertaking the management of fund property; the valuation of fund property and the safekeeping of fund property;
- to have at all times an “authorised representative” in the BVI;
- if structured as a company, to have at all times at least two directors, at least one of whom must be an individual;
- the offering terms shall contain the regulatory disclosures required by the PIF Regulations;
- to maintain a clear and comprehensive policy for the valuation of the property of the PIF;
- to provide notification to the Commission within 14 days of certain key changes; and
- to maintain financial records that are sufficient to show and explain its transactions and, at any time, enable its financial position to be determined with reasonable accuracy.

The Amendment Act also contains provisions related to penalties for non-compliance.

How Can Hatstone Help You?

All closed ended funds will have to properly assess their structures in light of the Amendment Act and subsequent regulations and make sure to undertake all necessary steps to comply with this new regime during the transition period which ends 1 July 2020.

Hatstone is ready to assist you with legal, corporate and fund administration services to bring your closed-ended fund in line with these newly imposed requirements.

For further Information, please contact:



Philipp Neumann
Group Partner
E: philipp.neumann@hatstone.com
T: +1 284 494 7065



Daniel Cann
Director
E: daniel.cann@hatstone.com
T: +507 830 5300



Calum McKenzie
Director
E: calum.mckenzie@hatstone.com
T: +1 284 494 4717

HATSTONE

www.hatstone.com

Folio Chambers, PO Box 800,
Road Town, Tortola,
British Virgin Islands

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