HATSTONE

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BRITISH VIRGIN ISLANDS - INVESTMENT FUNDS

Introduction

Hatstone is a multi-jurisdictional market leader providing legal, investment fund administration, fiduciary and corporate services with offices in the British Virgin Islands (BVI), Jersey, London, Panama and South Africa. Clients value Hatstone's longstanding experience in the area of investment funds and its active role in the market.

The British Virgin Islands

The BVI is one of the most popular and established jurisdictions for the formation and operation of offshore investment funds. BVI investment fund structures are globally known for their flexibility allowing investment managers and investment fund sponsors to tailor their offering to the needs of their investors. Key advantages of BVI investment funds include the following:

- A modern, recognised and robust legal system derived from English common law, including a very flexible corporate statute (the BVI Business Companies Act 2004),
- A dedicated and experienced commercial court,
- Competitive professional and government fees,
- Fast turn-around times,
- No regulatory restrictions on investment policies, strategies or objectives, and
- No requirement to appoint local directors, local functionaries, or local auditors.

Regulatory Background

Investment funds whether open-ended or closed-ended are regulated in the BVI. 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.

By way of background, the BVI introduced a new regulatory regime applicable to most closed-ended funds operating in or from within the BVI which came into force on 31 December 2019. There is transition period applicable for existing close-ended funds which now fall within the definition of a PIF. This transition period ends on 1 July 2020. Prior to the passing of the Amendment Act, only open-ended investment funds were regulated in the BVI, closed-ended funds were not.

In the BVI there are five types of regulated open-ended investment funds:

- the Incubator Fund,
- the Approved Fund,
- the Private Fund,
- the Professional Fund, and

- the Public Fund.

there is one type of regulated closed-ended fund:

- the Private Investment Fund.

The Incubator Fund

The incubator fund (the "**Incubator Fund**") is geared towards start up investment managers who wish to offer investments into a regulated investment fund at reasonable costs to build up their track record. The key characteristics of an Incubator Fund are:

- the total number of investors is restricted to 20,
- an investor must initially invest at least USD20,000,
- the net assets of the Incubator Fund must not exceed USD20,000,000 (or its equivalent in any other currency),
- no requirement to have an offering document in place,
- no requirement to have third party service providers appointed,
- no requirement to file audited financial statements, and
- the life span is limited to 2 years (or 3 if an extension is granted) after which an Incubator Fund may be converted into a Professional Fund, a Private Fund or an Approved Fund. Alternatively, an Incubator Fund can also be converted into an unregulated closed-ended fund.

An Incubator Fund must:

- have two directors, one of which must be an individual,
- have an authorised representative. The authorised representative will serve as a conduit between the fund and the BVI Financial Services Commission (the "FSC"),
- submit financial statements annually (which need not be audited),
- submit returns to the FSC regarding its status, i.e. the number of investors, total investments, aggregate subscriptions and redemptions, net asset value of the fund and details of any significant investor complaints; and
- notify the FSC within 14 days of any changes to the information provided in the application or in relation to any matter which is likely to have a material impact on the fund.

The Approved Fund

The approved fund (the "**Approved Fund**") is geared towards 'family and friends' funds managers. Its key characteristics are:

- the total number of investors is restricted to 20,
- net assets of the Approved Fund must not exceed USD100,000,000 (or its equivalent in any other currency),
- no minimum investment,
- no requirement to have an offering document in place,
- no requirement to have third party service providers appointed, except for appointment of a fund administrator which will, in short, provide the Approved Fund with registrar and transfer agent and

net asset value calculation services, and

- no requirement to file audited financial statements

Although not required by law, in practice the Approved Fund will often have a third-party investment manager appointed.

An Approved Fund must:

- have two directors, one of which must be an individual,
- have an authorised representative.
- submit financial statements annually (which need not be audited),
- submit returns to the FSC regarding its status, i.e. the number of investors, total investments, aggregate subscriptions and redemptions, net asset value of the fund and details of any significant investor complaints; and
- notify the FSC within 14 days of any changes to the information provided in the application or in relation to any matter which is likely to have a material impact on the fund.

The Professional Fund

The professional Fund (the "**Professional Fund**") is geared towards sophisticated investors. It is the most popular type of regulated investment fund in the BVI, with a market share of around 70% of all regulated BVI funds.

An investor in a Professional Fund must be either a professional investor or an exempted investor:

- a professional investor is a person whose ordinary business involves the acquisition or disposal of property of the same kind as the property held by the fund or who, whether individually or jointly with a spouse, has a net worth in excess of USD1,000,000. A professional investor must make an initial investment of at least USD100,000.
- an exempted investor is not subject to minimum investment requirements. An exempted investor includes the fund manager, administrator, promoter or underwriter of the fund or any employee of the manager of the fund.

A Professional Fund must:

- have two directors, one of which must be an individual,
- have an investment manager, funds administrator, custodian (or prime broker) and an auditor appointed (subject to certain exemptions),
- have an authorised representative,
- submit audited financial statements annually, and
- notify the FSC of certain changes as specified in the relevant legislation.

The Private Fund

The private fund (the "**Private Fund**") is geared towards start-up managers and family and friends funds. It has no minimum investment threshold. However, the Private Fund must be limited to either having no more than 50 investors or to inviting potential investors to subscribe for, or purchase, Interests on a private basis only. The Private Fund is an attractive alternative to the Approved Fund.

A Private Fund must:

- have two directors, one of which must be an individual,

- have an investment manager, funds administrator, custodian (or prime broker) and an auditor appointed (subject to certain exemptions),
- have an authorised representative,
- submit audited financial statements annually, and
- notify the FSC of certain changes as specified in the relevant legislation.

The Public Fund

The public fund (the "**Public Fund**") is geared towards investment managers seeking to offer a retail investment fund. The regulatory regime applicable to a Public Fund is considerably more complex than for any other regulated BVI fund. However, there are no restrictions on the type of investors, number of investors, marketing to investors or the maximum value of assets held by the Public Fund.

The Private Investment Fund

The private investment fund ("PIF") is a closed-ended fund geared towards private equity funds . A PIF must be limited to either having no more than 50 investors or to inviting potential investors to subscribe for, or purchase, interests on a private basis only, or to professional investors with an initial investment of each professional investor, other than exempted investors, of not less than USD100,000 (or its equivalent in another currency).

A PIF must:

- have two directors, one of which must be an individual,
- have at all times "appointed persons" responsible for undertaking the management of the PIF property; the valuation of the PIF property and the safekeeping of the PIF property,
- have an authorised representative,
- submit audited financial statements annually, and
- notify the FSC of certain changes as specified in the relevant legislation.

Fund Vehicles

BVI investments funds can be formed as companies, segregated portfolio companies (for a private, professional or public fund only), limited partnerships or unit trusts. Most of the BVI investment funds are established as companies limited by shares. Limited Partnerships are more often used in the context of unregulated closed-ended funds.

For more information or specific advice on investment funds in the BVI, please contact:

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