



UNTITLED

STRATEGIC FIDUCIARY ADVICE

POST-LICENSING OBLIGATIONS

INTRODUCTION

Laws such as the Securities and Investment Business Act ("**SIBA**"), the Investment Business (Approved Managers) Regulations, 2012 (the "**Approved Managers Regulations**") and the Mutual Funds Regulations, 2010 (the "**Mutual Fund Regulations**"), as well as other associated legislation, establish a number of **ongoing administrative requirements** that investment funds, managers, approved managers and other entities regulated by the BVI Financial Services Commission ("**FSC**") must comply with.

Failure to comply with these obligations can result in **finances** being imposed against **the regulated entity and/or the regulated entity's license being revoked** by the FSC.

In the case of public funds, additional obligations may exist. We will not deal with these in this document.

SIBA

Entities wishing to carry out "**investment business**" in the BVI must obtain a license from the FSC in accordance with **SIBA**. Investment business is widely defined and covers: (i) dealing in investments; (ii) arranging deals in investments; (iii) investment management; (iv) investment advice; (v) custody of investments; (vi) administration of investments; and (vii) operating an investment exchange.

Most of the clients we have in the firm have been licensed to provide investment advice.

SIBA sets out a number of requirements with which an entity which is regulated and licensed under SIBA (a "**Licensee**") must comply with on an ongoing basis in addition to the continuing obligations which generally apply to BVI entities.

These are generally classified as follows: (a) annual filing requirements, (b) positive obligations, and (c) actions which must not be undertaken without the consent of the FSC.

ANNUAL FILING REQUIREMENTS

Financial statements – the financial statements of a Licensee, signed by a director or trustee of a unit trust, must be submitted to the FSC within six (6) months of the end of its financial year accompanied by: a director's or trustee's certificate in the approved form; an auditor's report; a report on the affairs of the Licensee made in respect of the relevant financial year to the members or investors of the Licensee; and such other documents as may be prescribed from time to time.

When the Licensee uses the calendar year as its financial year, the financial statements must be submitted on or prior to June 30th each year.

THE FOLLOWING CHART DETAILS THE ANNUAL OBLIGATIONS:

TYPE OF LICENSE	POST-LICENSING OBLIGATIONS
PRIVATE FUND	<ul style="list-style-type: none"> • Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services. • Audited Financial Statements within 6 months of the end of each financial year accompanied by a director's certificate. • Mutual Fund Annual Returns within 6 months of the end of each reporting period (electronically presented). • Enroll with the BVI Financial Reporting System (US FATCA or CRS). • CRS Annual Filing. • FATCA Annual Filing.
PROFESSIONAL FUND	<ul style="list-style-type: none"> • Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services. • Audited Financial Statements within 6 months of the end of each financial year accompanied by a director's certificate. • Mutual Fund Annual Returns within 6 months of the end of each reporting period (electronically presented). • Enroll with the BVI Financial Reporting System (US FATCA or CRS). • CRS Annual Filing. • FATCA Annual Filing.
PUBLIC FUND	<ul style="list-style-type: none"> • Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services. • Audited Financial Statements within 6 months of the end of each financial year accompanied by a director's certificate. • Mutual Fund Annual Returns within 6 months of the end of each reporting period (electronically presented). • Enroll with the BVI Financial Reporting System (US FATCA or CRS). • CRS Annual Filing. • FATCA Annual Filing.
INCUBATOR FUND	<ul style="list-style-type: none"> • Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services. • Financial Statements within 6 months of the end of each financial year accompanied by a director's certificate. • Semi-annual reports must be filed no later than January 31st and July 31st each year. • No later than January 31st – statement confirming that it is not in breach of the requirements that entitle it to continue as an incubator fund. • Enroll with the BVI Financial Reporting System (US FATCA or CRS). • CRS Annual Filing. • FATCA Annual Filing.
APPROVED FUND	<ul style="list-style-type: none"> • Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services. • Financial Statements within 6 months of the end of each financial year accompanied by a director's certificate. • Annual Returns no later than January 31st each year. • Enroll with the BVI Financial Reporting System (US FATCA or CRS). • CRS Annual Filing. • FATCA Annual Filing.
INVESTMENT PRIVATE FUND ("PIF")	<ul style="list-style-type: none"> • Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services. • Financial Statements within 6 months of the end of each financial year accompanied by a director's certificate. • Enroll with the BVI Financial Reporting System (US FATCA or CRS). • CRS Annual Filing. • FATCA Annual Filing.

TYPE OF LICENSE

POST-LICENSING OBLIGATIONS

APPROVED MANAGER

- Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services.
- Financial Statements accompanied by a director's certificate, a report on the affairs of the Manager made in respect of the relevant financial year.¹
- Annual Return by January 31st of each year.²
- Enroll with the BVI Financial Reporting System (US FATCA and/or CRS).
- CRS Annual Filing.
- FATCA Annual Filing.
- AML Annual Return by March 31st of each year.
- Annual Return by March 31st of each year.

DEALING IN INVESTMENTS

- Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services.
- Semi-annual report within 30 days after the end of the period (pending legal matters, report detailing its assessment, details of contracts).
- Semi-annual report within 30 days after the end of the period detailing its total assets, clients' assets, cash at bank, number of clients, active clients, average client trading volume, value per client trade, aggregated amount of the value of the deals, total volume of deals carried out).
- Audited Financial Statements within 6 months of the end of each financial year.
- Enroll with the BVI Financial Reporting System (US FATCA and/or CRS).
- CRS Annual Filing.
- FATCA Annual Filing.
- AML/CFT Annual Return by March 31st of each year.
- "Investment Business" Annual Return by March 31st of each year.
- Annual Compliance Report by March 15th of each year.

ARRANGING DEALS IN INVESTMENTS

- Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services.
- Schedule outlining the clients for which it provides investment advice (including number of clients and aggregate total assets held by clients) on a quarterly basis within 15 days of the end of the quarter.
- Report on client complaints together to how they were handled on a quarterly basis within 15 days of the end of the quarter.
- Audited Financial Statements within 6 months of the end of each financial year.
- Enroll with the BVI Financial Reporting System (US FATCA and/or CRS).
- CRS Annual Filing.
- FATCA Annual Filing.
- AML/CFT Annual Return by March 31st of each year.
- "Investment Business" Annual Return by March 31st of each year.
- Annual Compliance Report by March 15th of each year.

INVESTMENT MANAGEMENT

- Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services.
- Schedule outlining details of the funds to which it provides services (including type of each fund, number of investors, total assets, NAV, and the nature and extent of services provided) quarterly basis within 15 days of the end of the quarter.
- Report on client complaints together to how they were handled on a quarterly basis within 15 days of the end of the quarter.
- Audited Financial Statements within 6 months of the end of each financial year.
- Enroll with the BVI Financial Reporting System (US FATCA and/or CRS).
- CRS Annual Filing.
- FATCA Annual Filing.
- AML/CFT Annual Return by March 31st of each year.
- "Investment Business" Annual Return by March 31st of each year.
- Annual Compliance Report by March 15th of each year.

INVESTMENT ADVICE

- Payment of annual license fees, annual registry fees, authorized representative services and registered agent, and registered office services.
- Schedule outlining details of the funds to which it provides services (including type of each fund, number of investors, total assets, NAV, and the nature and extent of services provided) quarterly basis within 15 days of the end of the quarter.
- Report on client complaints together to how they were handled on a quarterly basis within 15 days of the end of the quarter.
- Audited Financial Statements within 6 months of the end of each financial year.
- Enroll with the BVI Financial Reporting System (US FATCA and/or CRS).
- CRS Annual Filing.
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- AML/CFT Annual Return by March 31st of each year.
- "Investment Business" Annual Return by March 31st of each year.
- Annual Compliance Report by March 15th of each year.

POSITIVE OBLIGATIONS

In addition to the above filing obligations, Licensees must comply with the following:

AUTHORISED REPRESENTATIVE

A Licensee must appoint and at all times have an authorised representative (such as LP Authorised Representatives Ltd.) who shall be a person or entity resident in the BVI and certified by the FSC, unless the Licensee has a significant management presence in the BVI determined in accordance with the Regulatory Code, 2009 (the "Regulatory Code").

The functions of the authorised representative are to:

- (a) act as the main intermediary between the Licensee and the FSC;
- (b) accept service of notices and other documents on behalf of the Licensee; and
- (c) keep such records or copies of such records as may be prescribed from time to time.

Failure to comply with these obligations can result in fines being imposed against the regulated entity and/or the regulated entity's license being revoked by the FSC. In the case of public funds, additional obligations may exist. We will not deal with these in this document.

AUDITOR

Unless exempted, a Licensee must appoint and at all times have an auditor for the purpose of auditing its financial statements whose appointment has been approved by the FSC in writing prior to their appointment.

A Licensee must, within 14 days of the appointment of its auditor, submit a notice of appointment to the FSC.

The FSC may at any time, by notice in writing, direct a Licensee to supply to the FSC a report prepared by its auditor or such other person as may be nominated by the FSC on such matters as the FSC may determine, which may include an opinion on the adequacy of the accounting systems and controls of the Licensee. If a Licensee fails to appoint an auditor then the FSC may appoint an auditor for the Licensee.

Where an auditor resigns or their appointment is terminated before the expiration of their term of office, the auditor shall inform the FSC of the termination of his or her appointment or his or her resignation and disclose to the FSC the circumstances that gave rise to such termination or resignation.

COMPLIANCE OFFICER

Unless exempted, a Licensee must appoint and always have a compliance officer.

The Company shall elaborate an AML Compliance Manual satisfying Section 4 of AML Regulations, Part II-VII of the AML Code, and Appendix A & C of the APRU Guidelines.

MAINTENANCE OF RECORDS

As is the case for BVI incorporated companies and partnerships, a Licensee must keep records for at least five years (even after the cancellation or revocation of a Licensee's license) which: (i) are sufficient to show and explain its transactions; (ii) allow its financial position to be determined with reasonable accuracy at any time; (iii) enable it to prepare such financial statements and make such returns as it is required to make under SIBA and the Regulatory Code; and (iv) to enable its financial records to be audited in accordance with SIBA.

CLIENT ASSETS

A Licensee must ensure that client assets are identified or identifiable and appropriately segregated and accounted for and make arrangements for the proper protection of client assets.

MAINTENANCE OF FINANCIALLY SOUND CONDITION

Licensees must always maintain their business in a financially sound condition by: (a) having assets; (b) providing for its liabilities; and (c) generally conducting its business, so as to be in a position to meet its liabilities as they fall due. If a Licensee forms the opinion that it does not comply with this requirement then it must immediately notify the FSC in writing of this fact.

PROFESSIONAL INDEMNITY AND OTHER INSURANCE

Finally, a Licensee must always maintain such professional indemnity and other insurance as may be prescribed.

ACTIONS WHICH MUST NOT BE UNDERTAKEN WITHOUT THE CONSENT OF THE FSC

- > Appointment of directors and Senior Officers;
- > Transfers of a significant interest in a licensee;
- > Establishing Branches and/or subsidiaries outside the BVI; or
- > Change of name

APPROVED MANAGERS REGULATIONS

The approved Managers Regulations provide a light-touch regulatory framework for persons wishing to act as an investment manager or investment adviser in respect of assets not exceeding US\$400 million to: (i) a private fund or professional fund; (ii) a closed-ended fund that is incorporated in the BVI and has the characteristics of a private or professional fund; (iii) a person who is affiliated to a fund specified in limbs (i) or (ii) above; (iv) such other persons as the FSC may approve on a case- by- case basis on application; or (v) a person that is incorporated outside of the BVI, has equivalent characteristics to a private fund, professional fund or closed-ended fund and invests all or a substantial part of its assets in one or more funds specified in limbs (i) or (ii) above. Such persons may elect to be approved under the Approved Managers Regulations rather than pursuant to SIBA.

ANNUAL FILINGS

- Financial statements – an approved investment manager is required to prepare and submit financial statements in accordance with the provisions of SIBA (please see the description above in this regard); however there is no requirement for an approved investment manager to appoint an auditor or for its financial statements to be audited.
- Return – an approved investment manager must, no later than the January 31st each year, file a return with the FSC:
 - (a) stating that it is not in breach of the requirements of the Approved Managers Regulations that entitle him to continue as an approved investment manager;
 - (b) confirming that each director, senior officer, and shareholder with a significant interest in the approved investment manager is fit and proper; and
 - (c) providing, as at December 31st of the previous year, details of:
 - The persons for which it provides services.
 - The assets under management for each person for which it acts.
 - The number of investors in each person for which he acts.
 - Any significant complaints received by the approved investment manager.
- Annual renewal fee – an annual renewal fee must be paid to the FSC.
- Annual AML Return by March 31st each year.

REQUIRED APPOINTEES

An approved investment manager shall at all times have:

- At least two (2) directors, one of whom shall be an individual.
- An authorized representative in accordance with SIBA (please see the description above in this regard).
- AML Reporting Officer.

REQUIREMENTS TO NOTIFY THE FSC OF ANY CHANGE

An approved investment manager shall, within 14 days of the amendment of any of the information submitted in its application to the FSC, notify the FSC in writing of such change, providing the corresponding details and a written declaration as to whether or not the change complies with the requirements of the Approved Managers' Regulations.

In addition to notifying the FSC of any change as set out above, an approved investment manager must notify the FSC of any matter in relation to the approved investment manager or in the approved investment manager's conduct of a relevant business which has or is likely to have a material impact or a significant regulatory impact with respect to the approved investment manager or the relevant business.

MUTUAL FUND REGULATIONS

ANUAL FILINGS REQUIREMENT

We have already discussed this in the chart included at the beginning of this document.

CONTINUING OBLIGATIONS

As it was explained above in reference to the Licensees, a Fund must also have at all times two (2) directors, an authorised representative and maintain records which: (i) are sufficient to show and explain its transactions; (ii) allow its financial position to be determined with reasonable accuracy at any time; (iii) enable it to prepare such financial statements and make such returns as it is required to make under SIBA and the Regulatory Code; and (iv) to enable its financial records to be audited in accordance with SIBA.

Also, a Fund must provide written notice to the FSC:

- a. Within 14 days following the occurrence of:
 - I. The appointment of a director, authorized representative or auditor.
 - II. A director, authorized representative or auditor ceasing to hold office.
 - III. Change of place of business.
 - IV. Amendments to the constitutional documents or the offering memorandum; and/or issuance of a new offering memorandum.

As soon as practicable, of any material change in the nature or scope of the fund's business in the case of funds established outside the BVI.

SAFEKEEPING ARRANGEMENTS

The ability of a fund to ensure the protection and security of fund property is core to the fund's operations and the preservation of investor interests. The safekeeping arrangements that an investment fund must have in place are dependent on the type of assets that the fund may hold. Where safekeeping arrangements have ceased or are altered, the fund is required to notify the Commission of such changes.

VALUATION POLICY

All investment funds established in the BVI should include a valuation policy for its Fund Property that complies with the following guidelines:

- (a) Clear and comprehensive, with efficient procedures to ensure its effective implementation.
- (b) The fund in question shall ensure that the person having responsibility for the valuation comply with the corresponding policy approved.
- (c) The valuation policy and procedures shall be appropriate for the nature, size, complexity, structure, and diversity of the fund and fund property.
- (d) The valuation should be undertaken at least on an annual basis.
- (e) The valuation policy shall include procedures for the creation of internal reports and the investors.
- (f) The valuation policy shall ensure that the fund's manager is independent from the fund's administrator and its performance or control does not involve only one person.

1. An Approved Manager who has not conducted any business activity during a particular year may apply in writing to the Commission during the period when the financial statements are due, or any period of extension, for an exemption.
2. Example is attached as Annex I



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