HARNEYS

Segregated portfolio companies in the British Virgin Islands

Segregated portfolio companies (***SPCs***) are well recognised and popular corporate vehicles and the BVI has seen increasing demand for them over recent years. to the BVI Business Companies Act 2004 (***BCA***). These changes expanded the uses of SPCS, which are now available for more general, non-regulated purposes, as well as their traditional use in the regulated funds and insurance sectors.

How do SPCs work?

An SPC is a single company with the benefit of statutory segregation of assets and liabilities between segregated portfolios (Segregated Portfolios) established within the company. The assets and liabilities of each Segregated Portfolio are legally segregated from the assets and liabilities of any other Segregated Portfolio of the company and of the assets and liabilities of the company which are not held within or on behalf of any Segregated Portfolio (the ***General Assets***). A Segregated Portfolio is not a separate legal entity from the SPC. A BVI company can be incorporated as an SPC or an existing BVI company can convert into an SPC using a procedure set out in the BCA. The SPC has only one set of constitutional documents, one board of directors and, importantly, one set of annual license fees. Although it should be noted that there are incremental license fees associated with each new segregated portfolio, subject to an aggregate cap.

When can we use BVI SPCs?

BVI SPCs can now be used for a wide range of purposes:

- Funds: SPCs can be used for open-ended mutual funds registered or recognised as a private, professional or public fund, or as incubator and approved funds under the Securities and Investment Business Act 2010 (SIBA). The SPC is a popular vehicle for multi-class or umbrella investment funds in which two or more Segregated Portfolios use different investment strategies, including different levels of leverage, without risking cross contamination across the Segregated Portfolios. Closed-end funds in the BVI can also now be established as SPCs under the BCA and related regulations (The Segregated Portfolio Companies (BVI Business Company) Regulations 2018 (the ***BCA Regulations***)).
- Insurance: SPCs can be used for companies which will be licensed as an insurer under the Insurance Act 2008 (the Insurance Act).
- General unregulated purposes: the BVI can also offer an unregulated version of the SPC, which allows for increased flexibility and scope for these vehicles greatly. Under the BCA Regulations, SPCs can now be used for unregulated businesses including:
    - Holding assets for high net worth persons
    - Operating multiple businesses or types of business which require segregation from the general business of the SPC
    - Engaging in property development and management, including in real estate, ships, aircraft and other property
    - Bankruptcy remote vehicles in structured finance and capital markets transactions
    - Performing other duties, responsibilities and investments that are not inconsistent with any restriction under the BCA.

We have seen increasing demand for these structures amongst family office clients, and BVI SPCs can also be attractive for use in employee benefit schemes, and for carried interest vehicles to facilitate use as a carry partner in multiple underlying fund structures.

Are there any restrictions on using SPCs?

SPCs cannot be used for BVI companies which are licensed to undertake investment business under SIBA, such as broker dealers and investment managers, or companies which are licensed to carry on any activity regulated under the Banks and Trusts Companies Act, Company Management Act or Financing and Money Services Act. SPCs also cannot be used for companies which are licensed to act as an insurance manager or insurance intermediary.

How do I register an SPC in the BVI?

SPCs can be registered in the BVI with the written approval of the Financial Services Commission (the FSC). The application procedure and supporting documents required vary depending on whether the SPC is a regulated fund, insurer or general unregulated SPC. Each segregated portfolio of an SPC must include the words "Segregated Portfolio" in its name. To approve an application the FSC needs to be satisfied that the applicant has, or has available to it, the knowledge and expertise necessary for the proper management of Segregated Portfolios. Once the FSC has approved an application, the company can apply to the Registrar of Corporate Affairs (***Registrar***) to be incorporated as an SPC (or registered if an existing company).

Fees are payable to the Registrar and FSC, on incorporation and annually, including fees for each additional Segregated Portfolio established, with the level of fees depending on the SPC's purpose.

Please see our more detailed guide to Mutual Funds Established as SPCs in the BVI here for further information on setting up a mutual fund SPC or contact your usual Harneys contact for further details on setting up a general unregulated or insurance SPC.

What are the key features of SPCs?

Shares: SPCs can issue shares in each Segregated Portfolio in more than one class and a class of shares can be issued in more than one series. Distributions and dividends paid on Segregated Portfolio shares can only be made by reference to the assets and liabilities of the Segregated Portfolio in respect of which the shares are issued.

Contracts: Any contract or other agreement or similar arrangement which is intended to be binding on or for the benefit of a Segregated Portfolio must explicitly state that it is executed by the SPC for and on behalf of that Segregated Portfolio. The recent amendments also now specifically allow Segregated Portfolios to enter into contracts or other agreements with another Segregated Portfolio in the same SPC or with a segregated portfolio of another SPC.

Directors' duties: the directors of an SPC are under a duty to establish and maintain procedures to keep the Segregated Portfolio assets separate from the General Assets and assets of other Segregated Portfolios and, where appropriate, apportion assets and liabilities between Segregated Portfolios and the General Assets.

Creating a new Segregated Portfolio: an SPC will either need the prior approval of the FSC or to notify the FSC when creating a new Segregated Portfolio, depending on whether the SPC is a licensed insurer, regulated fund, or used for more general unregulated business, it will either need the prior approval of the FSC or notify the FSC when creating a new segregated portfolio.

Service providers: under the SIBA Regulations, regulated funds set up as SPCs must have an administrator, manager, auditor (if a professional, private or public fund) and custodian, unless an exemption has been granted by the FSC. A BVI insurer SPC must have an insurance manager and an auditor and may have one or more insurance intermediaries or loss adjusters. All SPCs must also have a registered agent in the BVI, like other BVI companies.

Financial statements: an SPC's financial statements must take account of the segregated nature of the company and include an explanation of the purpose of the SPC, how segregation of the assets and liabilities impacts the SPC's members and those with whom the SPC transacts, and the effects that any deficit in the assets of one or more Segregated Portfolio has on the General Assets.

Where the SPC is a regulated fund or insurer, further ongoing obligations apply under SIBA or the Insurance Act and related regulations, please contact us for more details.

How can Harneys help?

Harneys' investment funds and corporate teams are well versed in all aspects of the new SPC laws, so please contact your usual Harneys contact if you would more information on BVI SPCs or if you have any other questions or visit www.harneys.com/locations/harneys-bvi-road-town/.

For more information and key contacts please visit **harneys.com**