

## Continuing obligations for approved funds

As a mutual fund, your approved fund is regulated by the BVI Financial Services Commission (the **FSC**). This note provides a quick reference to your approved fund's ongoing BVI obligations.

Approved funds are governed by the Securities and Investment Business (Incubator and Approved Funds) Regulations 2015 (the **Regulations**) and the Incubator and Approved Funds Guidelines.

### The board and officers

An approved fund must:

- At all times have at least two directors, at least one of whom must be an individual
- Appoint an officer of the fund or another individual as Money Laundering Reporting Officer (**MLRO**) for the fund who may, in practice, be a director of the fund itself or a person provided the administrator to the fund (see below for more detail on anti-money laundering obligations)
- Appoint a Foreign Account Tax Compliance Act (**FATCA**) Responsible Officer and a principal point of contact for the BVI International Tax Authority (**ITA**) (see below for more detail on obligations under FATCA and CRS).

### Functionaries and other service providers

An approved fund is required to have an administrator at all times.

It is also required to have a BVI Authorised Representative at all times to act as a point of contact between the fund and the FSC. This is a service offered by our associated services business, Craigmuir Authorised Representative Limited.

It is not required to have any other functionaries or service providers, although it is free to appoint them should it wish to.

### Notice requirements

On the happening of certain events, an approved fund is required to notify the FSC. The table below summarises these notification requirements and the timeframe for providing notice.

Event triggering an obligation to notify the FSC	Time frame
A change of administrator	Immediately
An authorised representative ceasing to hold office (for whatever reason)	Immediately

Event triggering an obligation to notify the FSC	Time frame
Any change to the information provided to the FSC with the application ie: <ul style="list-style-type: none"> <li>▪ change of authorised representative;</li> <li>▪ change of director or general partner or to any details provided in relation to a director or general partner;</li> <li>▪ amendment to constitutional documents;</li> <li>▪ amendment to offering document (if applicable); and/or</li> <li>▪ change to investment warning and/or description of investment strategy (where there is no offering document)</li> </ul>	Within 14 days
Total number of investors exceeds the threshold for two consecutive months	Within 7 days of the end of the second month
Maximum value of the fund's assets exceeds the threshold for two consecutive months	Within 7 days of the end of the second month
Any matter related to the conduct of the business activities of the fund which may have a material impact on the fund (for example a suspension of subscriptions or redemptions or becoming subject to legal or regulatory proceedings)	Immediately
Number of directors falls below two (for whatever reason)	Immediately

## Annual regulatory and government requirements

There are various reporting and payment deadlines for an approved fund throughout the year.

Due by date	Action
31 January	File annual return in respect of previous year ending 31 December with the FSC
31 March	Pay approval fee of US\$1,200 to the FSC. Failure to pay may attract administrative penalties and/or other enforcement action
30 April	For funds that are limited partnerships, pay the licence fee of US\$750 to the Registry of Corporate Affairs (the <b>Registry</b> )
31 May	FATCA reporting deadline and Common Reporting Standard ( <b>CRS</b> ) reporting deadline
31 May	For funds that are companies incorporated from 1 January to 30 June, pay the Registry licence fee*

Due by date	Action
By the date six months after the end of its financial year (30 June assuming financial year end is 31 December)	Provide a copy of the fund's financial statements (which do not need to be audited) to the FSC
30 November	For funds that are companies incorporated from 1 July to 31 December, pay the Registry licence fee*

\*US\$550 for companies authorised to issue up to 50,000 shares and US\$1,350 for companies authorised to issue more than 50,000 shares.

## Reporting and financial statements

An approved fund is required to prepare and submit the following to the FSC:

- Financial statements, which do not need to be audited but are required to be approved or signed by a director or the general partner of the fund, within six months of the end of the financial year to which they relate.
- An annual return, no later than 31 January containing the following information as at 31 December of the preceding year:
  - the number of investors in the fund
  - the total investments in the fund
  - the aggregate subscriptions to the fund
  - the aggregate redemptions paid to investors
  - the net asset value of the fund
  - any significant investor complaint received by the fund and how the complaint was dealt with
  - a statement that the fund is not in breach of the requirements of the Regulations that allow it to continue as an approved fund

## Anti-money laundering obligations

The BVI anti-money laundering (**AML**) regime applies to all funds as they are classified as “relevant persons” under the Anti-Money Laundering Regulations 2008. In addition to appointing an officer to the fund or another individual as MLRO (as mentioned above), a fund will be required to:

- Put in place investor on-boarding procedures which address typical “know your client” requirements
- Put in place and maintain a written and effective system of internal controls which provides appropriate policies, processes and procedures for forestalling and preventing money laundering and countering the financing of terrorism (the **Manual**). The Manual should be reviewed annually to ensure compliance with AML regime in the British Virgin Islands
- Report suspicious transactions to the Financial Investigation Agency (**FIA**) in the BVI
- Report the identity of its appointed MLRO to the FIA

The BVI rules do provide for funds to outsource all and any of these obligations to functionaries based outside of the BVI, such as an administrator or investment manager (if the fund has one). Any outsourcing must, however, be documented in writing.

## Fund policies and arrangements

The Fund is required to maintain a valuation policy setting out the applicable procedures for the valuation of fund property, the preparation of reports on the valuation and setting out the mechanisms for sharing valuation information with investors (**Valuation Policy**). The Fund is also required to have a safekeeping policy and have adequate arrangements in place for the safekeeping of fund property (**Safekeeping Policy**).

On an annual basis, the Fund should review its Valuation Policy and Safekeeping Policy to ensure compliance with BVI legislation.

## Obligations under FATCA and CRS

Approved funds are required to register for a Global Intermediary Identification Number (**GIIN**) with the US Internal Revenue Service. Funds are also required to enrol with the ITA. Enrolment for FATCA reporting is made through the ITA's online portal, called BVI Financial Account Reporting System, and for CRS is made by email to [bvifars@gov.vg](mailto:bvifars@gov.vg).

Approved funds will need to identify reportable accounts and start to report the necessary information to the ITA. The reporting deadline for US FATCA, UK FATCA and CRS is 31 May.

The information that must be reported under US and UK FATCA and CRS is broadly similar and includes: the name, date of birth, tax identification number (**TIN**) (for Specified US Persons where available); National Insurance Number (for Specified UK Persons, where available); jurisdiction of residence (for reportable persons under CRS only); the account number; name and GIIN of the reporting financial institution; and the account balance (some minimums apply under FATCA).



For more information and key contacts please visit [harneys.com](https://www.harneys.com)

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