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The BVI Offers Hedge Fund Managers a ‘Lighter Touch’ Regulatory Regime

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The British Virgin Islands (“BVI”) has a regulatory regime which makes it significantly easier for small to mid-size hedge fund groups to establish investment managers and advisors in the BVI. For investment managers and advisors that qualify, this “approved manager” regime substantially reduces the time and cost of establishing new fund structures and entails significantly less ongoing regulation than is typically the case.

1. Background and Qualifying Criteria

Hedge fund managers and advisors incorporated in the BVI generally require an investment business licence under the *Securities and Investment Business Act, 2010* (“SIBA”). The process for obtaining an investment business licence under SIBA is relatively onerous and, upon obtaining such a licence, a manager or advisor is subject to regulation under SIBA and the *BVI Regulatory Code, 2009* (the “Regulatory Code”).

The Investment Business (Approved Managers) Regulations, 2012 (the “Regulations”) offers a “lighter touch” regulatory regime for BVI investment managers and advisors. To qualify under this regime:

1. the proposed investment manager or advisor must not have more than US\$400 million of assets under management; and
2. the funds which it manages or advises must (in broad summary) be recognised as private or professional funds in the BVI or be funds in another jurisdiction having equivalent characteristics to a BVI private or professional fund, such as certain funds in the Cayman Islands, Switzerland, Ireland, Luxembourg or the United Kingdom.

Any proposed investment manager or investment advisor that meets these criteria may apply to the BVI Financial Services Commission (the “FSC”) for approval as an “approved investment manager” (an “Approved Manager”) and, if so approved, the Regulations will:

- exempt the Approved Manager from having to obtain an investment business licence under SIBA;

- exempt the Approved Manager from having to comply with the continuing obligations under SIBA and the Regulatory Code; and
- exempt the Approved Manager from having to appoint a compliance officer and maintain a compliance manual.

2. Application Process

The application process under the Regulations is straightforward. A simple application form must be completed and submitted to the FSC together with (i) basic supporting documentation in respect of the manager/advisor and the fund; (ii) a copy of the management and/or advisory agreement; (iii) a curriculum vitae for each principal, director and senior officer of the manager or advisor; and (iv) a declaration that the principals, directors and senior officers of the manager or advisor satisfy certain “fit and proper” criteria. A BVI lawyer or licensed BVI authorised representative must also submit a declaration confirming the application is complete and meets the application requirements.

Assuming all is in order, it is expected that an application under the Regulations will be approved by the FSC within 10 days. Unless the FSC otherwise objects, the manager or advisor may commence business seven days after submission of the application for a period of 30 days. If the application is not approved within this 30 day period, the FSC can authorise the manager or advisor to continue carrying on business for another 30 days while it completes the approval process.

3. Continuing Obligations

Approved Managers are subject to far fewer continuing obligations than managers and advisors holding an investment

business licence under SIBA. Under the new regime, the Approved Manager must:

- file an annual return which (a) confirms it is in compliance with the Regulations and confirms that its principals, directors and senior officers continue to be “fit and proper”; and (b) provides details of its funds under management and whether any significant complaints have been received from investors;
- prepare and submit annual financial statements to the FSC, although there is no requirement for these financial statements to be audited;
- at all times have at least two directors and at all times have a licensed authorised representative in the BVI (our affiliated services company, Codan, can provide this service); and
- notify the FSC of any change in the information provided in its application form and of any matter which has a material impact on the Approved Manager or the business it carries on.

4. Exceeding the Assets under Management Threshold

If at any time following approval the assets under management of an Approved Manager exceed US\$400 million (for example, as a result of positive performance or new subscriptions to its funds), the Approved Manager is required to notify the FSC within seven days and within a period of three months will need to either (a) submit an application for an investment business licence under SIBA; (b) reduce its assets under management to below the US\$400 million threshold; or (c) obtain the FSC’s consent to continue operating as an Approved Manager with more than US\$400 million under management (which consent may not be forthcoming).

5. Conclusion

The Approved Manager regime substantially reduces the time and cost of setting up new fund structures and entails a light regulatory touch for managers and advisors. When considered in conjunction with the flexibility of the BVI’s corporate statute, the strength of the BVI’s commercial court and the BVI’s competitive incorporation fees, the regime consolidates the BVI’s position as one of the leading domiciles for offshore hedge funds.

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