

LEGAL INSIGHT

Key Features and Benefits of the BVI Incubator Fund

The BVI's Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 (the "**Regulations**") introduced the "Incubator Fund" which provides a streamlined basis for start-up investment managers to establish a track record of managing funds with an open-ended strategy. The Incubator Fund regime under the Regulations does not have some of the more stringent requirements that are found with the more established investment fund options (such as Professional Funds, Private Funds or Public Funds) under BVI law.

Features of the Incubator Fund

The key features of an Incubator Fund are:

1. Limited to total of 20 Investors (Sophisticated Private Investors)
2. US\$20,000 Minimum Initial Investment per investor
3. Net Asset Value of Fund must not exceed US\$20,000,000 (if it does, the Fund will need to convert to another type of Fund)
4. Duration of the Fund is limited to 2 years (with a possible further 12 months extension available at the discretion of the BVI's Financial Services Commission ("**FSC**") upon application)
5. Summary of Terms with Investors Warning is sufficient and there is no requirement for an Offering Memorandum
6. Financial Statements of the Fund are required to be prepared and submitted to the FSC within six (6) months of the end of the financial year to which they relate but are not required to be audited
7. Can commence business two days from the date the FSC receives the application.

Key Benefits of the Incubator Fund

The Incubator Fund shares a number of benefits with the other types of BVI open-ended funds, but have some benefits that are unique and make it especially attractive for start-up managers. These include:

- i. providing start up managers with a regulatory platform to develop their investment strategy and build a verifiable track record.
- ii. allowing managers to show their performance and capabilities while managing a regulated fund in one of the leading offshore jurisdiction at a much lower cost (set up and operational) than would be the case onshore.
- iii. typically has a shorter launch timeframe than other more established open-ended funds.
- iv. A 'lighter-touch' regulatory regime with fewer regulatory obligations.
- v. Fewer functionaries are required as the Incubator Fund may operate without an investment manager, auditor, administrator or custodian (though the fund is required to have arrangements in place for the safekeeping of fund property, which include provisions for the appropriate segregation of fund property).
- vi. No need for an offering document, only investor warnings and investment strategy information required.

Validity Period and Conversion

As introduced above, the idea behind the Incubator Fund is to provide a launchpad for emerging managers to develop their investment strategies over time and put all their resources into growing the fund and their track record. If, after the initial two (2) years (“**Validity Period**”) the Incubator Fund wishes to continue to carry on business as an Incubator Fund, it must submit a written application to the FSC (at least one month before the end of the Incubator Fund’s Validity Period) indicating that it would like to extend its period of validity for one additional year. The FSC has a discretion as to whether or not to authorise the extension. If an extension is not granted by the FSC or the Incubator Fund is not deemed viable to convert it must proceed to do one of the following: (a) proceed into voluntary liquidation under the BVI Business Companies Act, 2004; or (b) cease to be a mutual fund by taking the necessary steps to amend its constitutional documents.

During the Validity Period, there may be trigger events (e.g. Net Asset Value of the fund has exceeded or is close to exceeding US\$20,000,000) which require the Incubator Fund to convert or upgrade to a Private Fund, Approved Fund, or Professional Fund. Incubator Funds which seek to convert to Professional Funds are not required to have their existing investors invest additional proceeds in order to meet the requirement for all investors in a Professional Fund that each such investor must be a professional investor and must have invested at least an initial minimum of US\$100,000. On a conversion from an Incubator Fund to a Professional Fund, this requirement would only apply to new investors coming into the fund.

For specific guidance on the features and benefits of BVI Incubator Funds and submitting an application to the BVI FSC for recognition, please contact your usual Loeb Smith attorney or any of:

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