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## Offshore Legal Insight

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# Safekeeping Arrangements in the BVI for Private Investment Funds, Incubator Funds and Approved Funds

### Introduction

In December of 2019, British Virgin Islands (“**BVI**”) introduced a regulatory regime for the recognition of private investment funds, the Private Investment Funds Regulations, 2019 (the “**Regulations**”). Under these Regulations, closed-ended funds (including, real estate, private equity and venture capital funds) which were previously not regulated in the BVI, are required to be registered with the Financial Services Commission (“**FSC**”) as private investment funds prior to carrying on business.

Simultaneously, the FSC published guidelines that extended certain obligations of the Incubator Fund and the Approved Fund to Private Investment Funds, in order to clarify that the ability of a Fund to ensure the protection and security of fund property and the preservation of investors assets is core to a Fund’s operations.

### Safekeeping Arrangements

The Regulations require a Private Investment Fund to, at all times, have an appointed person responsible for the safekeeping of the Fund’s assets. Similarly, the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 requires Incubator Funds and Approved Funds to have, at all times, appropriate arrangements in place for the safekeeping of fund property.

The safekeeping arrangements that a Private Investment Fund, Incubator Fund or Approved Fund must have in place will depend on the type of assets that the Fund may hold as the FSC considers each safekeeping arrangement based on the particular asset type of the Fund.

A Private Investment Fund, Incubator Fund or Approved Fund is required at the time of applying for authorization or recognition with the FSC, and at all times thereafter, to be in a position to demonstrate that safekeeping arrangements are in place. Where Safekeeping Arrangements have ceased or are altered, the Fund is required to notify the FSC of such changes within 14 days of the cessation or of the changes being made.

These safekeeping arrangements must be disclosed in the offering documents or investor’s warning for each Private Investment Fund, Incubator Fund or Approved Fund. The FSC may request further information and documentation

to confirm that the safekeeping arrangements are in place when the application for authorization or recognition is made, or at any time thereafter.

The FSC has divided the type of assets and the corresponding safekeeping arrangements that are required as follows.

### Investments in Financial Instruments

Where a Private Investment Fund, Incubator Fund or Approved Fund invests in financial instruments such as stocks, bonds, futures, contracts for difference, options, etc., the Fund should maintain appropriate safekeeping arrangements with an appropriately licensed and/or qualified person with expertise in dealing in such assets. Normally, this person can be a traditional custodian, but administrators and other functionaries or service providers may be engaged for these purposes. A Private Investment Fund, Incubator Fund or Approved Fund may also establish such an arrangement with a prime broker that establishes custodial arrangements for the transactions being undertaken on behalf of its Fund clients.

### Investments in Tangible Assets

Where a Private Investment Fund, Incubator Fund or Approved Fund invests in tangible assets such as land, real estate, equipment, private equity, etc., a traditional custodian or prime broker is not required.

However, a Private Investment Fund, Incubator Fund or Approved Fund must ensure that it appoints a person that has the responsibility of securing that documentation with respect to the Fund's ownership of such assets is maintained and safeguarded according to the Regulations. The Private Investment Fund, Incubator Fund or Approved Fund must warrant that such person has sufficient expertise and resources to carry out the function.

### Investment in Other Funds

Where a Private Investment Fund, Incubator Fund or Approved Fund operates as a feeder fund (or sub-fund) in a master/feeder fund structure or operates in a fund of funds structure and places all its investments in another fund or in a number of funds, the Private Investment Fund, Incubator Fund or Approved Fund must make sure that a person is responsible for ensuring that the underlying fund or funds have appropriate (i.e. depending on the relevant asset class) custodial or safekeeping arrangements in place in relation to the underlying fund assets and that they understand these arrangements. This person would also be responsible for monitoring the investments in, and redemptions from, the underlying funds.

*This publication is intended to merely provide a brief overview and general guidance only and is not intended to be a substitute for specific legal advice or a legal opinion.*

*For specific legal advice on the safekeeping arrangements for BVI Funds, please contact your usual Loeb Smith attorney or:*

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### [About Loeb Smith Attorneys](#)

Loeb Smith is an offshore corporate law firm, with offices in the British Virgin Islands, the Cayman Islands, and Hong Kong, whose Attorneys have an outstanding record of advising on the Cayman Islands' law aspects and BVI law aspects of international corporate, investment, and finance transactions. Our team delivers high quality Partner-led professional legal services at competitive rates and has an excellent track record of advising investment fund managers, in-house counsels, financial institutions, onshore counsels, banks, companies, and private clients to find successful outcomes and solutions to their day-to-day issues and complex, strategic matters