

## Legal Insights

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# BVI Professional Fund

February 2023

A BVI Professional Fund is the most popular type of BVI open-ended investment fund. According to the BVI Financial Services Commission (“**FSC**”) statistical bulletin for Q3 of 2022, published on 21 December 2021, as at 30 September 2022, there were 856 Professional Funds recognized by the FSC in the BVI.

### Key features of a Professional Fund

A Professional Fund may carry on business in the BVI for up to 21 days prior to obtaining recognition by the FSC, provided that the Professional Fund lodges an application for recognition with the FSC within 14 days of launch. The FSC may recognize a mutual fund as a Professional Fund if it is satisfied that the following qualifying criteria are met (“**Recognition Requirements**”):

1. **Minimum initial investment:** US\$100,000 or its equivalent in another currency. However, the minimum investment limit does not apply to the Manager, Administrator, promoter, underwriter or an employee of the Professional Fund, which are each classed as “exempted investors”.
2. **Eligibility requirements:** Only suitable for “professional investors”. A professional investor is a person (i) whose ordinary business involves, whether for that person’s own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the Fund or (ii) who has signed a declaration that the person, whether individually or jointly with such person’s spouse, has

net worth in excess of US\$1,000,000 (or its equivalent in any other currency) and that person consents to being treated as a professional investor.

3. *No. of Directors*: At least two Directors. At least one Director should be an individual. There is no need for a person to register as a Director with the FSC or for a Director to be resident in the BVI.
4. *Investment Warning*: Whilst a Professional Fund will typically have an offering document in order to attract professional investors, this is not a requirement. If a Professional Fund does not have an offering document, as a minimum, it must (i) provide an explanation to the FSC of the reason why it does not have an offering document, and (ii) issue a prescribed investment warning statement to potential investors.
5. *Public interest consideration*: Recognition by the FSC of a Professional Fund must not be against the public interest.

A Professional Fund must not use the term “fund” or “mutual fund” or any derivative thereof in its name, unless the Professional Fund has obtained the prior written approval of the FSC and paid the requisite fee.

#### **What service providers is a Professional Fund required to have?**

In accordance with the Mutual Funds Regulations (Revised 2020) (the “**Regulations**”), a Professional Fund should at all times have an Auditor, Manager, Administrator and Custodian appointed. However, a Professional Fund can make an application to the FSC for exemption from the requirement to appoint a (i) Custodian (ii) Manager, and/or (iii) Auditor. There is no exemption for a Professional Fund from the requirement to have an Administrator.

A Custodian appointed by a Professional Fund needs to be functionally independent from the Manager and the Administrator or, where this is the same person, it must have systems and controls in place to ensure that persons fulfilling the custodial function are independent from the fund management or administration functions.

A Professional Fund is also required to appoint a Money Laundering Reporting Officer and an Authorised Representative.

### **Who can value a Professional Fund's assets?**

In accordance with the Regulations, a Professional Fund is required to maintain clear and comprehensive policies and procedures for the valuation of fund property. These policies and procedures are required to be submitted with the application for recognition.

Generally, a Professional Fund should ensure that the person having responsibility for the investment function (e.g. the Manager) is independent from the person with responsibility for the valuation process.

However, if a Professional Fund determines that the same person will have responsibility for both the investment function and valuation process, the Professional Fund is required to identify, manage and monitor and potential conflicts of interest that may arise and disclose this fact and how any potential conflicts of interest will be managed to the investors.

### **What are the financial record keeping requirements?**

A Professional Fund is required to prepare annual audited accounts in accordance with internationally recognized and generally accepted accounting standards and file such audited accounts with the FSC within 6 months of the Professional Fund's financial year end. This annual audit filing deadline can be extended upon request by the Professional Fund for a maximum of 3 months.

In addition, in accordance with the Securities Investment Business Act ("**SIBA**"), a Professional Fund is required by statute to maintain records that are sufficient to evidence and explain its transactions and enable its financial position to be determined with reasonable accuracy. A Professional Fund is required to retain such records for 5 years. If a Professional Fund fails to maintain records in compliance with SIBA, it is liable on summary conviction to a penalty at company level of US\$20,000.

## Enforcement powers of the FSC

The FSC may take enforcement action against a Professional Fund if in the FSC’s opinion, the Manager, Administrator or a Custodian (each a “**Functionary**”) does not satisfy its “fit and proper” criteria, or the Professional Fund no longer satisfies the Recognition Requirements. Where the FSC is entitled to take enforcement action against a Professional Fund, it may issue a directive that the Professional Fund suspends the issuance and/or redemption of interests in the Professional Fund.

## Key annual filing dates for Professional Funds

<b>Date</b>	<b>Action</b>
<b>31 March</b>	Annual recognition fee of US\$1,000 payable to the FSC
<b>1 April</b>	FATCA initial enrolment deadline
<b>30 April</b>	CRS initial enrolment deadline
<b>31 May</b>	CRS and FATCA Annual Return deadline
<b>31 May</b>	Annual fee of US\$550 (for a USS\$50,000 share capital) payable to the BVI Registry of Corporate Affairs in respect of a Professional Fund which was incorporated between 1 Jan – 30 June
<b>30 June</b>	Audited accounts for a Professional Fund with a financial year end of 31 December to be filed with the FSC
<b>30 June</b>	Mutual Fund Annual Return to be filed for a Professional Fund
<b>30 November</b>	Annual fee of US\$550 (for a USS\$50,000 share capital) payable to the BVI Registry of Corporate Affairs in respect of a Professional Fund which was incorporated between 1 July – 31 December
<b>By the anniversary of date of incorporation</b>	Submission of annual economic substance self-certification on BOSSs Portal

## Key event driven filings for Professional Funds

Date	Action
7 days' prior notice	Notification of proposed appointment of a Functionary
Within 7 days. A reason for the resignation is required	Notification of a Functionary ceasing to hold office
Within 14 days	Notification of appointment of a director, authorised representative or auditor
Within 14 days	Notification of a director, authorised representative or auditor ceasing to hold office
Within 14 days	Notification of any change in the address of the Professional Fund's place of business
No more than 14 days after	Notification of any amendment to the Professional Fund's constitutional documents
No more than 14 days after	Notification of the amendment of any offering document
No more than 14 days after	Any amendment to the Professional Fund's valuation policy

*This publication is not intended to be a substitute for specific legal advice or a legal opinion. For specific advice on BVI Professional Fund, please contact your usual Loeb Smith attorney or any of the following:*

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