

Legal Briefings

Key Features and Requirements of BVI Private Investment Funds

September 2023

In December 2019, the British Virgin Islands (“**BVI**”) introduced a new regulatory regime for closed-ended funds in the BVI by requiring closed-ended funds (e.g., private equity funds, venture capital funds and real estate funds) which qualify as “private investment funds” (“**PIFs**”), to apply to the Financial Services Commission of the BVI (“**FSC**”) to be recognized and regulated by the FSC.

On the same date, the FSC also published (i) the Private Investment Funds Regime Guidelines, which sets out the requirements for recognition of a PIF by the FSC and (ii) Fund Safekeeping Arrangements Guidelines, which sets out the type of arrangements considered by the FSC to be appropriate for PIFs (and other regulated fund types in the BVI), based on the particular asset class invested in.

What is a PIF?

A PIF is defined as a company, a partnership or unit trust which (i) collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk and (ii) issues fund interests, which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, partnership or unit trust.

An entity which meets the definition of a PIF cannot legally carry on business or hold itself out as carrying on business as a PIF, unless it is recognized by the FSC as a PIF. The key distinguishing factor between a PIF and the other types of regulated BVI funds (such as approved funds, professional funds, and private funds) is that the investors in a PIF do not have the right to redeem or withdraw interests from the PIF on demand. Single investor funds fall outside the scope of a PIF, given that they do not involve a “pooling” of investor funds. Similarly, single project funds will not fall within the definition of a PIF, due to the lack of diversification of portfolio risk.

What are the key requirements of a PIF?

1. A PIF needs to be lawfully incorporated or registered under the laws of the BVI or a country outside the BVI.

2. A PIF that is a company (or the general partner in the case of a limited partnership or the trustee in the case of a unit trust) must have two directors, one of whom must be an individual.
3. The constitutional documents of the PIF must clearly state that:
 - (i) the PIF is limited to 50 investors;
 - (ii) any invitation for interests in the PIF may be made on a private basis only;
 - (iii) the minimum investment is US\$100,000, except for certain “exempted investors”; and
 - (iv) the PIF is only suitable for “professional investors” i.e. a person 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 PIF or (ii) who has signed a declaration that he (whether individually or jointly with his spouse), has net worth in excess of US\$1,000,000.
4. A PIF must have an authorised representative.
5. A PIF must appoint a suitable MLRO and have a suitable AML Policies and Procedures which are compliant with BVI law.
6. Recognition of the fund as a PIF must not be against the public interest.
7. A PIF must at all times have a person appointed who is responsible for (each an “**Appointed Person**”):
 - (i) the management of fund property;
 - (ii) the valuation of fund property; and
 - (iii) the safekeeping of fund property, including the segregation of fund property.

An Appointed Person can be (i) a director or the general partner of the PIF (ii) an independent third party with experience in performing the specified function or (iii) a person licensed in BVI or a recognized jurisdiction to carry out such functions.

The PIF must give due consideration to the Fund Safekeeping Arrangements Guidelines, when making a decision on the Appointed Person to be responsible for the safekeeping of the PIF’s property. There is no statutory requirement for a PIF to appoint a fund manager, fund administrator or custodian. Where an application for recognition as a PIF has been approved by the FSC, the PIF will be issued with a Certificate of Recognition as a PIF.

What documents are required to be submitted to the FSC for a PIF application?

An application form must be submitted to the FSC, along with a copy of the PIF’s (i) constitutional documents, (ii) certificate of incorporation or registration, (iii) Register of Directors for a company, (iv) term sheet or offering document, (v) valuation policies and procedures, and (vi) a CV for each director.

What are the requirements for valuation of a PIF?

A PIF must have a valuation policy, which shall be used to value the PIF's assets. The valuation policy must be appropriate for the nature, size, complexity and assets under management of the PIF. A valuation of the PIF's assets must be undertaken at least on an annual basis. If the same person is the Appointed Person in respect of the management of fund property and valuation of fund property for the PIF, the PIF must clearly disclose to investors and monitor any potential conflicts of interest.

What are the audit requirements for a PIF?

A PIF is required to prepare audited financial statements that comply with IFRS, GAAP (UK, U.S. or Canadian) or other internationally recognized and generally accepted equivalent accounting standards. There is no requirement for a local BVI auditor or local BVI auditor sign-off for a PIF.

What are the ongoing obligations of a PIF?

1. The PIF must maintain financial records to explain its transactions, which must be retained for at least 5 years after completion of the transaction to which they relate.
2. The audited accounts of a PIF must be filed with the FSC within 6 months of the PIF's financial year end. The FSC may allow an extension for filing of up to 9 months upon payment of the requisite fee.
3. The PIF (or the appointed third party) must attend to all CRS/ FATCA related reporting for the PIF.

What event-driven notifications must a PIF make to the FSC?

A PIF must notify the FSC (via its authorised representative) upon the occurrence of certain events, including:

1. If it does not have two directors (or the general partner in the case of a limited partnership or trustee in the case of a unit trust) within 7 days.
2. The appointment of an Appointed Person at least 7 days' prior to the appointment.
3. The resignation of an Appointed Person within 7 days, including a statement of the reason for such Appointed Person ceasing to act.
4. Any amendment to the offering document, term sheet of valuation policy within 14 days.

What are the consequences of breach of the laws relating to PIFs?

Schedule 7 of the Securities and Investment Business Act (Revised Edition 2020), as amended, sets out the monetary penalties for offences in relation to a PIF, including (i) for an entity carrying on as a PIF without being recognized by the FSC as a PIF and (ii) for a PIF not maintaining financial records.

Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to BVI Private Investment Funds, please contact us. We would be delighted to assist.

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