

Private Investment Fund Regime: Application Process

Introduction

The British Virgin Islands (**BVI**) Securities and Investment Business Act, 2010 (the **Act**) was amended to introduce a new private investment fund (**PIF**) regime for previously unregulated closed-ended investment funds effective as of 31 December 2019. The Act is accompanied by the Private Investment Funds Regulations, 2019 (the **Regulations**) which together constitute the PIF regime.

Under the PIF regime, a private investment fund must apply to the Financial Services Commission (the **Commission**) for recognition before it may be promoted or allowed to operate as a PIF in or from within the BVI. However, all PIFs currently operating in the BVI must apply for recognition within the transition period specified in the Act which commenced on 31 December 2019 and ends on 1 July 2020. Any PIF failing to do so will be considered to be conducting unauthorised financial services business and therefore subject to enforcement action.

In this guide, we focus solely on the application process for recognition of PIFs currently operating in the BVI which must be submitted to the Commission by **1 July 2020**. This guide is based on the requirements contained in the Act and the Regulations, the Guidelines prepared by the Commission and the statements made by the Director of the Commission's Investment Business Division at the virtual Meet the Regulator Forum held on 2 June 2020.

The Application Process

Step 1:

As a critical first step, PIFs should conduct a classification exercise to determine whether or not they fall within the definition of "private investment fund" under the Act.

A PIF is defined as any company, partnership, unit trust or any other body incorporated, registered, formed or organised in the BVI or any other country which:

- (a) collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; and
- (b) 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, unit trust or other body.

PIFs will typically include most types of private equity funds, for example. However, joint venture enterprises, family offices and investment vehicles investing in only one asset class will not generally satisfy the PIF definition and will quite likely fall outside scope.

In the final analysis, each PIF must be examined on its own circumstances to determine if both limbs of the definition are satisfied. If you are uncertain about your entity's classification, we strongly recommend that you speak with a lawyer.

Step 2:

PIFs are required to have an authorised representative and appointed persons responsible for undertaking: (i) valuation; (ii) management; and (iii) safekeeping relating to the fund property.

You should have the names and addresses of these persons to hand as you prepare to complete the application.

You will also need additional information about the PIF including places of business inside and outside the BVI, entity type, the names of the directors or general partners, details of the trustees where applicable and the PIF's financial reporting mechanism.

Step 3:

Once you have gathered all the relevant information, you should commence the application process immediately.

You will need:

(a) the completed application form together with:

- the PIF's constitutional documents;
- the PIF's certificate of incorporation, formation, registration or equivalent document;
- the PIF's valuation policy;
- the offering document or term sheet, or the proposed offering document or term sheet, if applicable;
- register of directors, if applicable;
- a résumé or biography for each director, general partner, trustee or other underlying individual(s) where the director, general partner or trustee is a corporate entity; and

(b) the initial application fee of US\$700.

Please note that the PIF's constitutional documents should indicate that:

- the PIF is not authorised to have more than 50 investors; or
- an invitation to subscribe for, or purchase, fund interests shall be made on a private basis only; or
- the fund interests shall be issued only to professional investors with a minimum investment of US\$100,000.

It might not be necessary or feasible for a PIF to issue an offering document or a term sheet. In those cases, the PIF must specify in the application form:

- why the fund does not intend to issue an offering document or term sheet; and
- how the information relating to investments in the fund will be communicated to investors or potential investors.

Step 4: The Commission has said that it will not process incomplete applications. You should therefore ensure that the application form is thoroughly completed and all supporting documents are in place and meet specifications.

Step 5: You should then submit the completed application form and accompanying documents to the Commission by hand or email.

Step 6: The Commission will assess completed applications to ensure that they are compliant with the Act and the Regulations. Assessments will be done on a “first come, first served” basis and, as indicated by the Commission, within 24-48 hours of receipt.

As specified in the Act, when the Commission grants an application for recognition, it will register the PIF in the Register of Private Investment Funds. The Commission will also issue a certificate of recognition as a PIF upon payment of the recognition fee of US\$1,000 (for approvals up to 30 June 2020).

Recognition fees for any PIF approved after 30 June 2020 will be US\$500. Such recognition will be valid until the end of the year. PIFs must then pay an annual fee of US\$1000 to maintain the certificate of recognition.

If the application has been denied, the Commission will notify the applicant accordingly.

Conclusion

PIFs currently operating in the BVI should seek to become compliant with the new PIF regime as a matter of urgency. We can help you to navigate this process from classification of your investment vehicle to recognition by the Commission.

For more information or if you require any assistance with your PIF applications, please feel free to email us at ghp@ghpbvi.com or reach out to one of our lawyers using the contact details below.

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